

T H E  
L A W  
CONCERNING  
ELECTION  
OF

Members for *Scotland*,  
To Sit and Vote in the  
Parliament of *Great-Britain*.

S H E W I N G  
The ORDER, and what is necessary to  
be Observed in ELECTING the  
PEERS, and COMMISSION-  
ERS for Shires and Burghs,

The DUTY of the Officers concern'd in Re-  
turning the *Summons of Parliament*, with  
other Matters relating to Members of Par-  
liament, according to the Statutes and  
Laws in the North and South Parts of this  
United Kingdom.

Together with  
*The Privilege belonging to Parliament-Men*

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publish'd for the Use of these concern'd in the  
Elections for *Scotland*.

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The Second EDITION Corrected and Augmented  
with several Acts and Statutes relative to Elections,  
by JOHN SPOTISWOOD of That-Ilk, Advocate,

*Edinburgh*, Printed by *William Brown and Company*,  
and sold at his Shop in the *Parliament-Clofs*. 1722.





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# T H E P R E F A C E.



*HIS Dissertation I present you with, being the first Essay of this Kind, was occasionally communicated to some Friends, who were of Opinion, It ought not to be confin'd to private Students; seeing they thought it would be useful, to the Peers, Freeholders, and others concern'd in making Election of Members to the Parliament, who from it might receive Knowledge of their Power and Duty in this Behalf. Wherefore, in Compliance, I have revis'd and fitted it for the Publick, wishing it may answer the End; and more especially that it may be serviceable to the Honourable, The House of Commons, in determining the controverted Elections of the Members for North-Britain; which*



## THE PREFACE.

*which I hope it will, because nothing of the Laws and Customs of Scotland concerning Elections, has hitherto been digested and published, and is now necessary, when by Stat. 5. Anne 8. it is declared, That none can elect, or be elected a Representative for any Shire or Burgh in Scotland to the Parliament of Great-Britain, except such as are capable by the Laws of Scotland.*

*I have inserted much of the Law of England concerning Elections, upon account of its Affinity with our Law; and because, in Cases of this sort, not defin'd by our own Customs, we may expect to be judged thereby. Intending also, That our Countrymen should here get a Glance of the Law of England; which I doubt not but will be agreeable.*

*I have given an Explication of a few English Terms of Law, and for others the Reader may consult at his own Leisure the English Law Lexicon.*

*To distinguish the Citations of the several Laws, please know, That these marked thus, Stat. 6. An. 8. and Stat. 7. Hen. VI. 15. and the like, are English; and signify, The Eighth Statute made in the Sixth Year of the Reign of Queen Anne; and the Statute made in the Seventh Year of the Reign of King Henry the Sixth, Chapter Fifteenth, or Statute Fifteenth. For in England, the Parliaments are marked by the Number of the Year of the Reign of the Queen or King*



## The P R E F A C E.

*King. The Laws of Scotland are cited by the Number of the Acts, the Number of the Parliament and Session thereof, holden by a particular King or Queen ; as, Act 114. Parl. 11. James VI. Or, Act 5. Parl. 1. Sess. 2. Charles II. To these I sometimes add the Year of GOD, that the Time when the Law was enacted and introduc'd may be known.*

*Tho' by the Laws of Scotland before the Union, all the Electors present at the Meeting behov'd to sign the Commission to their Representative, as is set down Page 70. But since the Union, an Indenture between the Freeholders, the Clerk of the Meeting, and the Sheriff of the Shire, according to the Custom of England, has come in Place of this Commission ; and this Indenture must bear, That the Person therein-nam'd was, by the Plurality of Freeholders, elected and chosen, and is sign'd by Seven or Eight of the Voters, or so many as please, but needs not be signed by all the Electors.*

*The First Edition of this Treatise being sold off, the Book-seller demanded a Second, which is here given, with Addition of all Statutes made concerning Elections since November 1710.*

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The LAW, concerning the  
Election of Members  
for *Scotland*, to Sit and  
Vote in the Parliament  
of *Great-Britain*.

TITLE I.

*Of the Parliament, in general.*

**T**H E Parliament being dissolved,  
(which is done by the Sovereign,  
either at Rising of the Parliament,  
in the Intervals thereof, by a Proclama-  
tion) none but the King, or Queen, at the  
time, hath Authority to summon a Parlia-  
ment; except that, in the King's Absence  
out of the Realm, the *Custos Regni*, or the  
*Lords Justices* in the King's Name, and, dur-  
ing His Minority, the *Protector Regni* or Re-

A

gent



*gent* doth summon a Parliament, which cannot begin without the King's Presence, either in Person, or by Representation in Commission.

By the Laws, as well of *England* as of *Scotland*, the Parliament in being, at the Time of the Demise or Death of the Sovereign, was through the said Decease *ipso jure* dissolved, till by *Stat. 7 and 8. W. III. 15. in England*, and by *Act 17. Parl. 1. Sess: 6. W. III. Anno 1696. in Scotland*, but more effectually, since the Union of the Two Kingdoms, by a Statute in the sixth Year of the Reign of Her late Majesty Queen *Ann*, it is Enacted, That the Parliament, in being at the Time, shall not be dissolved by the Death of Her Majesty, and if sitting at such Death, is impowered to act for six Months, unless prorogued or dissolved by the Person to whom the Crown of *Great-Britain* shall come; and, if the Parliament is at the Time prorogued, it shall meet on the Day to which it is prorogued, and shall continue the Residue of the six Months, unless sooner prorogued or dissolved.

If the Parliament in being happens, at the Time of the Death of Her Majesty, to be separated; it shall immediately meet, and act for six Months, unless sooner dissolved.

If there is no Parliament in being, the last immediate Parliament shall convene and



fit at *Westminster*, continue as aforesaid, and act as if the same had never been dissolved, but subject to be prorogued or dissolved, as said is.

The Lords Justices of *Great Britain* (appointed by the same Stat. 6. Ann. 7. for continuing the Administration of the Government, in the Name of the Protestant Successor, in his Absence out of this Realm, and till his Arrival in to Britain) are prohibited to dissolve the Parliament, ordered to be assembled as said is, without express Direction from the Successor; and are thereby disabled to give the Royal Assent to any Bill for repealing or altering. 13. and 14. Ch. II. 4. for Uniformity of publick Prayers: Or the Act made in Scotland Anno 1707, for securing the Protestant Religion, and Presbyterian Church-Government. And every the Lords Justices, concurring in giving the Royal Assent to such Bill, are declared guilty of High Treason.

By the same Statute, it is provided, That, before the Successor arrive in *Great Britain*, the Lords Justices shall call a Parliament, by Writs tested in their Names, the same shall not be dissolved by the Arrival of the Successor, but shall proceed without new summons.

By St. 4. (a) E. III. 14. A Parliament is  
A 2 ordain-



ordained to be holden once a Year, and oftener if Need be.

By St. 36. (a) *E. III.* 10. A Parliament was to be holden every Year.

By St. 16. (b) *C. II.* 1. The sitting, and holding of Parliaments, is not to be intermitted or discontinued above three Years.

By the Claim of Right for *Scotland*, it is declared, That for Redress of all Grievances, and for amending, strengthening and preserving of the Laws, Parliaments ought to be frequently called, and allowed to sit, and the Freedom of Speech and Debate secured to the Members.

By St. 6. (c) *W. and M.* 2. It is enacted, That from thenceforth a Parliament shall be holden once in three Years at the least; and within three Years after the Dissolution of that Parliament, and so of every other Parliament thereafter, legal Writs under the Great Seal are ordained to be issued forth for calling, assembling, and holding another new Parliament. And further, it is statuted, That from thenceforth no Parliament whatsoever shall have any Continuance longer than for three Years only, at the farthest, to be accounted from the Day on which by the Writs they are appointed to meet,

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(a) *Anno Dom.* 1362.

(b) ————— 1665

(c) ————— 1695



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But by Stat. 1. *Georg. cap.* 38. reciting the above Act. It is declared, That it hath been found by Experience, that the said Clause has proved very grievous and burdensome, by occasioning greater Expences in Order to Election of Members, and more violent and lasting Heats and Animosities among the Subjects, than were ever known before the said Clause was enacted; and if the said Provisions should continue, it might probably at this Juncture, when a restless and popish Faction are endeavouring to renew the Rebellion within this Kingdom, and an Invasion from Abroad be destructive to the Peace and Security of the Government: Therefore enacted, That this present Parliament, and all Parliaments that shall hereafter be called, assembled or held, shall have Continuance for seven Years and no longer, to be computed from the Day on which, by the Writ of Summons, this present Parliament hath been, or any future Parliament shall be appointed to meet, unless this present, or any such Parliament hereafter to be summon'd, shall be sooner dissolved by His Majesty, &c.

The King or Queen, resolving to have a Parliament, doth, out of the Court of Chancery, send Writs of Summons; at the least, fifty Days before the Parliament begin: Every Lord of Parliament, either Spiritual, as



Arch Bishops and Bishops, or Temporal, as Dukes, Marquesſes, Earls, Viſcounts and Barons, Peers of the Realm, and Lords of Parliament ought to have ſeveral Writs of Summons.

All the Judges of the Realm, Barons of the Exchequer, of the Coif, the King's learned Council and the Civilians, Maſters of the Chancery, are called to give their Aſſiſtance and Attendance in the upper Houſe of Parliament; but they have no Voices in Parliament, and their Writs to them differ from the Writs to the Barons. For their Writs are, *Quod interſitis nobiſcum et cum cæteris de Concilio noſtro*, (and ſometimes *nobiſcum* only,) *ſuper præmiſſis tractaturi, veſtrumq; Concilium impenſuri*.

And in every Writ of Summons to the Biſhops, there is a Clause requiring them to ſummon the following Perſons to appear perſonally at the Parliament, in theſe Words, *Præmonentes Decanum & Capitulum Eccleſiæ veſtræ Norwicensis, ac Archidiaconos, totumque Clerum veſtræ Dioceſeos, quod iidem Decani & Archidiaconi, in propriis perſonis ſuis, ac dictum Capitulum, per unum, idemque Clerus per duos Procuratores idoneos, plenam & ſufficientem poteſtatem ab ipsis Capitulo & Clero diviſim habentes, prædicto die & loco perſonaliter interſint; ad conſentiendum his quæ tunc ibidem, de communi conſilio dicti Regni noſtri, divina favente*

(a)

(b)

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*favente clementia contigerit ordinari.* And the Bishop, under his Seal, makes Certificate accordingly, and these are called *Procuratores Clerici*, and many Times have appeared in Parliament, as spiritual Assistants, to consider, consult and concert *ut supra*, but had never Voices there, because they were no Lords of Parliament.

Other Writs are sent to the Sheriffs of each County, to summon the People to elect Knights for each County, Citizens and Burgeses for each City and Burgh, according to the Laws and Custom.

By Statute 7. (a) *Hen. IV.* 15. the Election of the Knights of the Shires is ordered thus: At the next County, after the Delivery of the Writ, Proclamation is to be made in full County of the Day and Place of the Parliament; and that all there present, as well Suitors summoned as otherways, shall attend to the Election of the said Knights, and then, in a full County, a free and an indifferent Election shall be made, *notwithstanding any Respect or Command to the Contrary* (b).

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(a) *Anno Dom.* 1406

(b) The Occasion of the last Clause was this, In the Year 1404, which was the 6th Year of the Reign of *Henry IV.* this King, by special Letters directed for that End, brought about, That no Lawyer should be returned Knight or Burges to serve



After such Choice, the Names of the Parties so elected, (be they present or absent) is ordained to be written in an Indenture, under the Seals of all them that did chuse them; which Indenture, so sealed and tacked to the said Writ, is to be the Sheriff's Return thereof, touching the Knights of the Shires; and in such Writs this Clause shall be put, *Et Electionem tuam, in pleno Comitatu tuo factam, distincte & aperte, sub sigillo tuo, & sigillis eorum qui Electioni illi interfuerunt; Nobis, in Cancellaria nostra, ad diem & locum brevi contentum certifies indilate.*

The Sheriff, after the Receipt of the Writ, is order'd to deliver a Precept, under his Seal,

serve in the Parliament then called; and that upon Pretence of an Ordinance in the House of Lords, in 46 Edward III. but at the next Parliament holden in the Year following, when the said Statute 15. was made, upon Complaint of the Commons, who were by these Letters interrupted in their free Elections, it was enacted, That Elections should be freely and indifferently made, notwithstanding of any Prayer or Commandment to the contrary, *i. e. sine precepto* without any Prayer or Gift; and *sine precepto*, without Commandment of the King by Writ, or otherwise; or of any other: And my Lord Justice Coke says, It was but an Act declaratory of the Ancient Laws and Custom of Parliament, and to ascertain the Liberty of the Subject.

By the Claim of Right for England, Stat. 1. W. and M. Sect. 2. 2. it is declar'd, That the Election of Members of Parliament ought to be free.



to every Major, and Bailiff or Bailiffs, or Bailiff where no Major is, of the Cities or Boroughs within his County, reciting the Writ, and commanding them, if it be a City, to chuse by the Citizens of the same City; and, if a Borough, to chuse Burgesses to come to the Parliament: And such Head-Officers are lawfully to return such Precepts to the same Sheriffs, by Indentures betwixt them, of such Elections, and the Names of the Citizens and Burgesses so chosen; and thereupon the Sheriff is to make a good Return of every such Writ, and also of every such Return made by the said Head-Officers.

In these Elections anciently all the People of England had their Votes, till it was enacted by Henry VI. in the Year 1430, That none should have Suffrage in Election of Knights of the Shire, but such as, being Freeholders, did reside in the County, and had yearly Forty Shillings (which, till the Discovery of the Gold and Silver in *America*, was more than Ten Pound is now.) Whence it came to pass, that the Lay-Commons were then elected as the Clergy-Commons (the *Procuratores Cleri*) were, and ever have been, viz. *sine prece, sine retio, sine poculo, &c.* yet there was then, as now, this Defect or Absurdity, That whereas all *Englishmen*, who have considerable Estates, ought not to be Taxed, without their own Consent in Parliament, by themselves or their



their Representatives ; yet Copy-holders in *England* (whereof there are some who have 1000 *Lib.* a Year) have no Voice in the Election of Knights of the Shire.

Thus much relating to *South-Britain*, and peculiar to *England*, I thought fit to premise as expedient to make what follows to be better understood.



## T I T L E II.

*Of the Order, and of what is necessary to be observ'd, in Electing the Peers for Scotland, to Sit and Vote in the House of Peers of the Parliament of Great Britain.*

**B**Y the Third Article of the Union of *England* with *Scotland*, it is agreed That the United Kingdom of *Great Britain* shall be represented by one and the same Parliament, to be Stiled, *The Parliament of Great Britain*.

And by the Twenty second Article it is appointed, That of the Peers of *Scotland*, at the Time of the Union, Sixteen shall be the Number to sit and vote in the House of Lords in the Parliament of *Great Britain* : And that

where



When Her Majesty shall declare Her Pleasure  
 holding the First Parliament of *Great Bri-*  
*tain*, until the Parliament of *Great Britain* shall  
 make further Provision therein, a Writ is to  
 issue under the Great Seal of the United  
 Kingdom, directed to the Privy Council of  
*Scotland*, commanding them to cause Sixteen  
 Peers, who are to sit in the House of Lords,  
 to be summoned to Parliament, in manner  
 settled by Act of Parliament in *Scotland*, of the  
 11 February 1707; and is thus: The said  
 sixteen Peers are ordain'd to be nam'd by the  
 other Peers, whom they are to represent, and  
 by their Heirs and Successors to their Digni-  
 ties and their Honours, *out of their own Num-*  
*bers* (a) and that by open Election, and Plura-  
 lity of Voices of the Peers present, and of the  
 Proxies of such as shall be absent; *the saids*  
*Proxies being Peers, and producing a Mandate*  
*Writing, duly signed before Witnesses* (b),  
 and

(a) By a Resolve in the House of Peers, *January*  
*1709*, a Peer of *Great-Britain* is not allow'd to  
 vote. (b) The House of Peers, *January 26th 1709*,  
 declared, That a Proxy of a Peer of *Scotland*, to vote  
 at such Election, is not valid, without subscribing  
 before Witnesses; and upon the 29th of the same Month it  
 was resolved, That a Proxy of a Peer to vote at such  
 Election is valid, altho' the Writer's Name be not  
 sign'd therein; And that a Proxy sign'd at *West-*  
*minster* before Witnesses, but not seal'd, nor on stam-  
 ped Parchment, was a good Proxy at the Election of  
 the Sixteen Peers, who are to represent the Peers of  
*Scotland* in Parliament.



and both the Constituent and Proxy being qualified according to Law : Declaring also That such Peers as are absent, being qualified, as aforesaid, may send to all such Meetings, Lists of the Peers which they judge fit to be validly signed (c) by the said absent Peers, which shall be reckoned in the same Manner, as if the Parties had been present, and given in the said List. And, in case of the Death or legal Incapacity of any of the said Sixteen Peers, that the foresaid Peers of Scotland shall nominate another of their own Number in his Place, and the Writ to have been directed to the Privy Council of Scotland, until the Parliament of Great Britain made further Provision therein, was to have contained a Warrant and Command to issue out a Proclamation in Her Majesty's Name, requiring the Peers for the Time to meet and assemble at such Time and Place within Scotland, as Her Majesty and Her Royal Successors should think fit, to make Election of the said Sixteen Peers, and requiring the Clerk-Register, or Two of the Clerks of Session, to attend all such Meetings

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(c) January 29th, 1709, Resolved, That a List given in at such Elections is not valid without subscribing Witnesses ; but is valid without the Writer's Name designed in the Body of the Instrument ; and that a Power to give in a List, being signed and sealed before Witnesses, is valid without the Writer's Name and Designation.



being qualified to administer the Oaths that are, or shall be by Law required, and to ask the Voices; and having made up the Lists, in Presence of the Meeting, to return the Names of the Sixteen Peers chosen, certified under the Subscription of the said Clerk-Register, Clerk or Clerks in Session attending, to the Clerk of the Privy Council of Scotland, who again was to return the same to the Court, from whence the Writ should issue, under the Great Seal of the United Kingdom.

But seeing by an Act of the First British Parliament, in the 6th Year of Her Majesty's reign, Intituled, *An Act for rendring the Union of the Two Kingdoms more intire and compleat*; is Enacted, That, after the first of May 1708, the Queen's Majesty and Her Successors shall have but one Privy Council for Great Britain, which shall have the same Powers as the Privy Council of England had at the Time of the Union, and none other; whereby the Council of Scotland, as before the Union, is at an End, and extinguished: So that, pursuant to the Faculty reserved to the Parliament of Great Britain, in the said 22d Article of the Treaty of Union, some farther Provision be made to be made for electing the said Sixteen Peers for Scotland: And accordingly the same Parliament, by an Act, Intituled, *An Act to make further Provision for electing and summoning Sixteen Peers for Scotland, to Sit in the House*



*House of Peers of the Parliament of Great Britain, &c.* have enacted, That thereafter if her Majesty shall declare her Pleasure for holding any Parliament, a Proclamation shall be issued under the Great Seal of *Great Britain*, commanding all the Peers of *Scotland* to meet at *Edinburgh*, or in any such Place in *Scotland*, and at such Time as shall be appointed therein, to elect the foresaid Sixteen Peers as by the foresaid Act of the Parliament of *Scotland*, and by this Act of the Parliament of *Great Britain*, is appointed.

This Proclamation must be duly published at the Market-Cross of *Edinburgh*, and in all the County-Towns in *Scotland*, Twenty five Days at least before the Meeting of the Peers to such Election.

All the Peers, before they proceed to Election, shall, in Presence of the Peers assembled take the following Oaths.

**I** A. B. do sincerely promise and swear, That I will be Faithful, and bear True Allegiance to Her Majesty Queen Anne. So help me God.

**I** A. B. do swear, That I do from my Heart abhor, detest and abjure, as Impious and Heretical, this damnable Doctrine and Position, That the Princes Excommunicated or Deprived by the Pope or any Authority of the See of Rome, may be deposed



ed or murdered by their Subjects, or any other  
whatsoever.

And I do declare, That no Foreign Prince,  
Person, Prelate, State or Potentate, hath or ought  
have any Jurisdiction, Power, Superiority,  
Preheminence or Authority, Ecclesiastical or Spiri-  
tual, within this Realm. So help me God.

A. B. do truly and sincerely acknowledge, pro-  
fess, testifie and declare in my Conscience, be-  
fore God and the World, That our Sovereign Lady  
Queen Anne is Lawful and Rightful Queen of  
this Realm, and of all other Her Majesty's Domi-  
nions and Countries thereunto belonging. And I  
solemnly and sincerely declare, That I do believe  
in my Conscience, that the Person pretended to be  
Prince of Wales, during the Life of the late King  
James, and since his Decease, pretending to be,  
and taking upon himself the Stile and Title of  
King of England, by the Name of James III. or  
Scotland, by the Name of James VIII. or the  
Stile or Title of King of Great Britain, hath not  
any Right or Title whatsoever to the Crown of this  
Realm, or any other Dominions thereunto belong-  
ing. And I do renounce, refuse and abjure any  
Allegiance or Obedience to him. And I do swear,  
that I will bear Faith and true Allegiance to Her  
Majesty Queen Anne, and Her will defend to the  
 utmost of my Power, against all Traiterous Con-  
spiracies and Attempts whatsoever, which shall be  
made against Her Person, Crown or Dignity.  
And



And I will do my utmost Endeavour to disclose  
 and make known to Her Majesty and Her Successors,  
 all Treasons and Traiterous Conspiracies which I shall know to be against Her, or any of  
 Them. And I do faithfully promise, to the utmost  
 most of my Power, to support, maintain and defend  
 the Succession of the Crown against him the said  
 the said James, and all other Persons whatsoever,  
 ver, as the same is and stands settled by an Act  
 Entitled, An Act, declaring the Rights and Liberties  
 of the Subject, and settling the Succession of the  
 Crown to Her present Majesty and the Heirs of  
 Her Body, being Protestants. And as the same, by  
 another Act, Entitled, An Act for the further  
 Limitation of the Crown, and better securing the  
 Rights and Liberties of the Subject; is, and stands  
 settled and entailed, after the Decease of Her  
 Majesty; and for Default of Issue of Her Majesty  
 to the Princess Sophia, Electress and Dutchesse  
 Dowager of Hanover, and the Heirs of Her  
 Body, being Protestants. And all these Things  
 I do plainly and sincerely acknowledge and swear  
 according to these express Words by me spoken  
 and according to the plain and common Sense  
 and Understanding of the same Words, without  
 any Equivocation, mental Evasion, or secret Re-  
 servation whatsoever. And I do make this Re-  
 cognition, Acknowledgment, Abjuration, Renun-  
 ciation and Promise, heartily, willingly and truly  
 upon



upon the true Faith of a Christian. So help me  
G O D.

And these Peers also, before they proceed  
to Election, are ordain'd to make, repeat,  
and subscribe the Declaration following.

**I** A. B. do solemnly and sincerely, in the Pre-  
sence of G O D, profess, testify and declare,  
That I do believe, that in the Sacrament of  
the LORD's Supper, there is not any Tran-  
substantiation of the Elements of Bread and  
Wine into the Body and Blood of Christ, at, or  
after the Consecration thereof by any Person  
whatsoever: And that the Invocation or Adora-  
tion of the Virgin Mary, or any other Saint,  
and the Sacrifice of the Mass, as they are now  
used in the Church of Rome, are Superstitious  
and Idolatrous. And I do solemnly, in the Pre-  
sence of G O D, profess, testify and declare,  
that I do make this Declaration, and every Part  
whereof, in the plain and ordinary Sense of the  
Words read unto me, as they are commonly un-  
derstood by English Protestants, without any E-  
vasion, Equivocation, or Mental Reservation  
whatsoever, and without any Dispensation al-  
ready granted me for this Purpose by the Pope,  
any other Authority or Person whatsoever; or  
without any Hope of any such Dispensation from  
any Person or Authority whatsoever; or without  
thinking that I am, or can be acquitted before  
B G O D



*GOD or Man; or absolved of this Declaration, or any Part thereof, altho' the Pope, or any other Person or Persons, or Power whatsoever, should dispense with or annul the same, or declare that it was null and void from the Beginning.*

Peers living in *Scotland*, but not present at such Meeting, may take the Oaths, make and subscribe the Declaration in any Sheriff's Court of *Scotland*, and every Sheriff is required to return the original Subscription of such Oath and Declaration, and to make thereof a Return in Writing, under his Hand and Seal (d), to the Peers assembled; where by such Peer shall be qualified to make a Proxy, or to send a signed List, containing the Names of the Sixteen Peers for whom he giveth his Vote.

As to the Peers of *Scotland* residing in *England*, they may take the said Oaths, and make and subscribe the said Declaration in the Courts of *Chancery*, of *Queen's Bench*, of *Common Pleas*, or of *Exchequer* in *England*, which, being certified by Writ under the Seal of the Court to the Peers in *Scotland* at the Meeting

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(d) The House of Peers, upon the 26th *January* 1709, declared, That the Sheriff's Certificate of a Peer of *Scotland's* taking the Oaths, in order to qualify himself to Vote at such Election, ought to be seal'd as well as sign'd.



Meeting, shall be sufficient to entitle such Peer to make his Proxy, or to send his signed List, as aforesaid.

And in case any Peer of Scotland, (who before issuing such Proclamation, have made the forefaid Oaths in *England* or *Scotland* to be certified as aforesaid; and if taken in Parliament, to be certified under the Great Seal (*Great-Britain*) be at the Time absent in the Service of His Majesty, he may make Proxy, or send a signed List.

Such as are Peers both of *England* and *Scotland*, must sign by the Title of their Peerage in *Scotland*.

A Peer who hath not Right to Vote at the Election of the Sixteen, cannot be a Proxy, None are capable of more than Two Proxies at one Time.

The Peers must give the Names of the Persons to be Elected, to the Clerk of Register, or to Two of the principal Clerks of Session, who, after the Election, must certify the Names of these Elected, and sign and attest the same in presence of the Peers: Which Certificate, must be returned to the Court of Chancery of *Great Britain*, before the Time appointed for Meeting of the Parliament.

The Peers shall come to such Meetings with their ordinary Attendants only, under the Penalties now in Force in *Scotland*, which describe with what Number the Subjects



there may repair to the Courts of Justice (e).

(e) By Act 5. Parl. 1. *James I. Anno 1424.* it is statute, That none of what Condition soever travelling in the Country, have with him more Persons than may suffice him, and for whom he shall make ready Payment. And if any Complaint be made of these, the King's Officers are commanded to arrest them, and to put them under Lawborders, till the King be certify'd, and give Notice what shall be done with these Trespassers.

By Act 82. Parl. 14. *James II. Anno 1457,* it is ordained, That all the Lieges shall, in sober and quiet manner, come to the King's Courts Spiritual or Temporal, and that none bring with him more Persons than are in his daily Household and Family, and upon coming to his Inns, that he lay down his Weapons. Ratified by Act 104. Parl. *James III.*

By Act 41. Parl. 6. *Queen Mary, Anno 1555,* it is statute, That Persons conven'd before a Justice Court, have with them at the Bar, six allies or of their Friends able to give them Counsel, and their Advocates to defend; and the Justice or Justices are to charge the Breakers of this Act to deliver their Persons in Ward under the Pain of Rebellion, and if they disobey, to put them to the Horn: and if they obey and enter in Ward, they are to remain during the Queen's Pleasure.

By Act 140. Parl. 8. *James VI. Anno 1584,* the above Acts are ratified, with this Addition, That none repair to his Majesty's Justice Courts, for



The Peers so assembled, shall not act, propose, or treat of any Thing except only the Election of the Sixteen Peers; and every  
 B 3 Peer

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nal Causes, or otherwise than the said Acts provide, under the Pain of incurring the Crime of Convocation of our Sovereign Lord's Lieges, to be executed with all Rigour, as well against the Persons convoking, as against those who are convoked. In July 1583, there was a Proclamation emitted, whereby the Subjects were prohibited to come towards Court with a greater Number than was appointed in the Proclamation, viz. Fifteen with an Earl, as many with a Bishop, Ten with a Lord, and as many with an Abbot or Prior; with a Baron Six. And all these were, under great Penalties, commanded to come in a peaceable manner.

An unlawful Convocation is a Commotion of the People raised without lawful Authority, and upon private Account. The convoking of the Lieges Bands of Men of War, for Daily or Monthly Wars, without special Licence, is by Act 75. Parl. 9. Queen Mary; and by Act 12. Parl. 10. James VI. punishable by Death. But naked Assistance at such meetings, is not *per se* relevant to infer Death, but only an arbitrary Punishment; as was found in the year 1665, and inferred from the above-mentioned Act 5. James I. And Sir George Mackenzie, in his *Animals*, Title *Seditions*, concludes, That the Crime of simple Convocation is ordinarily pursued before the Council of Scotland, and was seldom punished either by the Council or by the Justice Court *tantum Crimen per se*; but only as an aggravating Quality of a Riot or other Crime.



Peer who shall presume to propose, debate or treat of any other Matter, shall incur the Penalty of a Premunire, in the 16. R. 15. *Anno Dom. 1393.*

In case any of the Sixteen Peers so chosen shall die, or be disabled in Law to sit in the House of Peers, Her Majesty is forthwith to issue a Proclamation for electing another Peer of *Scotland* to sit in the Room of such Peer to be published, and the Election to be proceeded in, as is above directed.

By the 8th Act Parliament of *Scotland*, the Year 1707, it is provided and declared That none shall be capable to elect or to be elected, but such as are 21 Years complete and Protestant, excluding all Papists, or such who, being suspected of Popery and required to subscribe the *Formula* contained in the Act 3. Sess. 8. and 9. Parl. K. *William III.* in the Year 1700 Entitled, *An Act preventing the Growth of Popery*; and is as follows.

**I** A. B. do sincerely from my Heart, profess and declare before GOD, who searcheth the Heart, That I do deny, disown and abhor these Tenets and Doctrines of the Papal Roman Church, viz. the Supremacy of the Pope and Bishop of Rome, over all Pastors of the Catholic Church, his Power and Authority over Kings, Princes and States, and the Infallibility that

pretend



pretends to, either without, or with a General Council; his Power of Dispensing and Pardoning, the Doctrine of Transubstantiation, and the Corporal Presence with the Communion without the Cup in the Sacrament of the LORD's Supper, the Adoration and Sacrifice professed and practised by the Popish Church in the Mass, the Invocation of Angels and Saints, the Worshipping of Images, Crosses and Relicks, the Doctrine of Supererogation, Indulgences and Purgatory, and the Service and Worship in an unknown Tongue. All which Tenets and Doctrines of the said Church, I believe to be contrary to, and inconsistent with the written Word of GOD: And I do from my Heart deny, disown and disclaim the said Doctrine and Tenets of the Church of Rome, as in the Presence of GOD, without any Equivocation, or Mental Reservation; but according to the known and plain Meaning of the Words as to me offered and proposed. So help me GOD.

The Peers on the Day, and at the Place appointed by the King's Proclamation, meet about Ten of the Clock, and are attended by the Clerk of Register, or by two Clerks of the Session, who call the Rolls of the Peers, and to such of them as are present administer the Oaths appointed by Law; after which, they call a second Time the Roll, and if the Peer be present in Person, he names with an audible Voice the Sixteen

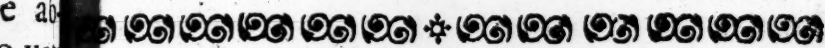


Peers, or gives to the Clerk a List of their Names, which he, in presence of the Meeting, reads; and another Clerk, or his Secretary, marks the Names of the Peers that such a Peer has elected and voted for. And if the Peer called by the Roll be absent, but is represented by his Proxy, or has sent a signed List, the Clerk reads the List, as before, and likewise the Certificates concerning the absent Peer's qualifying himself in order to vote in this Election, with the Proxy; and any of the Peers present may inspect and examine if these several Writings be perfected according to the Prescript of the Law; and if they be not found formal, he proposes his Objections, which the Clerk marks, before he proceeds to the calling the other Peer next in the Roll, to give his Vote in the Election.

When all the Peers are called, and the Voting or Listing is ended, the Clerks make a Scrutiny in presence of the Meeting; and upon finding the Names of the Peers, who to the Number of 16, have Majority of Votes in the Election, they write out a Certificate, signifying the Names of the said 16 Peers, at this Meeting elected, and sign and attest the same in presence of the Peers. And the Clerk of Register returns it to the Court of Chancery of Great-Britain, before the Time appointed for Meeting of the Parliament.



In this Certificate, no Notice is to be taken of the Objections made against any of these Peers, but such as please may get from the Clerks a Copy of these Objections, and if the down-sitting of the Parliament, they may, in the House of Peers, dispute the Election of the Peer objected against.



The Family, Name, and Title of the Nobility of *Scotland*, ranked according to the Rolls of the last *Scottish* Parliament, Anno 1707.

D U K E S.

Eldest Sons.

<b>H</b> amilton, D. or Dutchess of <i>Hamilton</i> .	}	Marquis of <i>Clidisdale</i> .
St, Duke or Dutchess of <i>Buccleugh</i> .		Earl of <i>Dalkeith</i> .
nos, D. of <i>Lenox</i> .		Earl of <i>Darnly</i> .
rdon, D. of <i>Gordon</i> .		Marquis of <i>Huntly</i> .
uglas, D. of <i>Queensberry</i> .		Earl of <i>Drumlanrig</i> .
mpbell, D. of <i>Argile</i> .		Marquis of <i>Lorn</i> .
uglas, D. of <i>Douglas</i> .		Earl of <i>Angus</i> .
urray, D. of <i>Athol</i> .		Marq. of <i>Tullibardine</i> .
raham, D. of <i>Montrose</i> .		Marq. of <i>Graham</i> .
r, D. of <i>Roxburgh</i> .		Marq. of <i>Cessford</i> .

MARQUISSES.

Eldest Sons.

ay, Marq. of <i>Tweeddale</i> .	Lord <i>Yester</i> .
er, Marq. of <i>Lothian</i> .	L. <i>Newbottle</i> and <i>Jedburgh</i> .
bnston, M. of <i>Annandale</i> .	L. <i>Johnston</i> .

E A R L S.



## E A R L S.

## Eldest Sons.

<i>Lindsay</i> , Earl of <i>Crawford</i> .	Lord <i>Lindsay</i> .
<i>Hay</i> , E. or Countess of } <i>Errol</i> .	L. <i>Hay</i> .
<i>Keith</i> , Earl <i>Mareschal</i> .	L. <i>Keith</i> .
<i>Sutherland</i> , E. of <i>Sutherland</i> .	L. <i>Strathnaver</i> .
<i>Areskine</i> , E. of <i>Mar</i> .	L. <i>Areskine</i> .
<i>Lesly</i> , Earl or Countess } of <i>Roths</i> .	L. <i>Lesly</i> .
<i>Douglas</i> , E. of <i>Morton</i> .	L. <i>Aberdour</i> .
<i>Areskine</i> , E. of <i>Buchan</i> .	L. <i>Auchterhouse</i> .
<i>Cuninghame</i> , E. of <i>Glencairn</i> .	L. <i>Kilmairs</i> .
<i>Montgomery</i> , E. of <i>Eglinton</i> .	L. <i>Montgomery</i> .
<i>Kennedy</i> , E. of <i>Cassils</i> .	L. <i>Kennedy</i> .
<i>Sinclair</i> , E. of <i>Caithness</i> .	L. <i>Berrendale</i> .
<i>Stuart</i> , E. of <i>Murray</i> .	L. <i>Down</i> .
<i>Maxwel</i> , E. of <i>Nithsdale</i> .	L. <i>Maxwel</i> .
<i>Seton</i> , E. of <i>Winton</i> .	L. <i>Seton</i> .
<i>Livingston</i> , E. of <i>Linlith-</i> } <i>gow and Callander</i> .	L. <i>Livingston</i> .
<i>Home</i> , E. of <i>Home</i> .	L. <i>Dunglass or Coldingham</i> .
<i>Drummond</i> , E. of <i>Perth</i> .	L. <i>Drummond</i> .
<i>Home</i> E. of <i>Dunbar</i> .	
<i>Fleming</i> , Earl of <i>Wigton</i> .	L. <i>Fleming</i> .
<i>Lyon</i> , E. of <i>Strathmore</i> .	L. <i>Lyon or Glamis</i> .
<i>Hamilton</i> , E. of <i>Abercorn</i> .	L. <i>Paisley</i> .
<i>Areskine</i> , E. of <i>Kellie</i> .	L. <i>Pittenweem</i> .
<i>Hamilton</i> , E. of <i>Haddington</i> .	L. <i>Binning</i> .
<i>Stuart</i> , E. of <i>Galloway</i> .	L. <i>Garlies</i> .
<i>Mackenzie</i> , E. of <i>Seaforth</i> .	L. <i>Mackenzie or Kintail</i> .
<i>Maitland</i> , E. of <i>Lauderdale</i> .	L. <i>Maitland</i> .
<i>Hay</i> , E. of <i>Kinnoul</i> .	L. <i>Duplin</i> .
<i>Campbell</i> , E. of <i>Loudoun</i> .	L. <i>Mauchlin</i> .
<i>Creighton</i> , E. or Countess } of <i>Dumfries</i> .	L. <i>Creighton</i> .
<i>Alexander</i> , E. of <i>Striveling</i> .	L. <i>Alexander</i> .
<i>Bruce</i> , E. of <i>Elgin</i> .	L. <i>Kinlofs</i> .
<i>Carnegie</i> , E. of <i>Southesk</i> .	L. <i>Carnegy</i> .

Stuart



Quart, E. of Traquair.	L. Linton.
er, E. of Ancrum.	L. Nisbet.
seems, E. of Weems.	L. Elcho.
Ramsay, E. of Dalhousie.	L. Ramsay.
ikely, E. of Airlie.	L. Ogilvy.
ikely, E. of Findlater and Seafeld.	} L. Deskford.
Dalziel, E. of Carnwath.	
ally, E. of Leven and Melvil.	} L. Dalziel.
almasb, E. of Dysart.	
Maule, E. of Panmure.	L. Huntingtour.
Hamilton, E. of Selkirk.	L. Maule and Breckin,
Carnegy, E. of Northesk.	L. Daive.
Bruce, E. of Kincardine.	L. Rosehill.
andsay, E. of Belcarras.	L. Bruce.
Douglas, E. of Forfar.	L. Cummerlane.
Middleton, E. of Middleton.	L. Wendal.
Gordon, E. of Aboyne.	L. Clermont.
Livingston, E. of Newburgh.	L. Glenlivet.
oyd, E. of Kilmarnock.	L. Kinnaird.
ochran, E. of Dundonald.	L. Boyd.
Douglas, E. of Dumbartoun.	L. Cochran.
Keith, E. of Kintore.	L. Ettrick.
Campbell, E. of Broadalbine.	L. Inverury.
Gordon, E. of Aberdeen.	L. Glenurchy.
Drummond, E. of Melfort.	L. Haddo.
Murray, E. of Dunmore.	L. Forth.
Hamilton, E. of Orkney.	L. Blair.
Hamilton, E. of Ruglen.	L. Kirkwal or Dechmont,
Douglas, E. of March.	L. Rickarten or Hillhouse,
ume, E. of Marchmont.	L. Neidpath.
Carmichael, E. of Hyndford.	L. Polwart.
Mackenzie, E. of Cromarty.	L. Carmichael.
Dalrymple, E. of Stair.	L. Tarbat.
rimrose, E. of Roseberry.	L. Dalrymple.
Boyle, E. of Glasgow.	L. Dalmeny,
llier, E. of Portmora,	L. Boyle.
Quart, E. of Bute,	L. Montfiquart.

Hops,



*Hope, E. of Hoptoun.*  
*Scot, E. of Delarain.*  
*Douglas, E. of Solway.*  
*Campbel, E. of Islay.*

*L. Nithrie.*  
*L. Hermitage.*  
*L. Tibbers.*  
*L. Oransay, or Dunoon, &c.*

## VISCOUNTS.

<i>Carey, Visc. of Falkland.</i>	<i>Osburn, V. of Dumblain, now</i>
<i>Constable, V. of Dunbar.</i>	<i>Duke of Leeds in England.</i>
<i>Murray, V. of Stormont.</i>	<i>Graham, V. of Preston.</i>
<i>Gordon, V. of Kenmure.</i>	<i>Cheney, V. of Newhaven.</i>
<i>Arbuthnot, V. of Arbuthnot.</i>	<i>Drummond, V. of Strathbala.</i>
<i>Creichton, V. of Frendraught.</i>	<i>Livingston, V. of Teviot.</i>
<i>Seton, V. of Kingston.</i>	<i>Hay, V. of Duplin.</i>
<i>MacGill, V. of Oxenfoord.</i>	<i>Crawford, V. of Garnock.</i>
<i>Ingram, V. of Irving.</i>	<i>Primrose, V. of Primrose.</i>
<i>Livingston, V. of Kilsyth.</i>	

## BARONS, or LORDS.

<i>Forbes, L. Forbes.</i>	<i>Balfour, L. Burleigh.</i>
<i>Frazer, L. Salton.</i>	<i>Drummond, L. Madderty.</i>
<i>Gray, L. Gray.</i>	<i>Napier, L. Napier.</i>
<i>Stuart, L. Ochiltree.</i>	<i>Fairfax, L. Cameron.</i>
<i>Cathcart, L. Cathcart.</i>	<i>Richardson, L. Cramond.</i>
<i>Sinclair, L. Sinclair.</i>	<i>Mackay, L. Rae.</i>
<i>Douglas, L. Mordingtoun.</i>	<i>Forrester, L. Forrester.</i>
<i>Semple, L. Semple.</i>	<i>Forbes, L. Pitsligo.</i>
<i>Elphinston, L. Elphinston.</i>	<i>M<sup>l</sup> Lellan, L. Kirkcudbright.</i>
<i>Oliphant, L. Oliphant.</i>	<i>Frazer, L. Frazer.</i>
<i>Frazer, L. Lovat.</i>	<i>Hamilton, L. Bargeny.</i>
<i>Ross, L. Ross.</i>	<i>Ogilvy, L. Bamff.</i>
<i>Sandilands, L. Torphichen.</i>	<i>Murray, L. Elibank.</i>
<i>Lesly, L. Lindores.</i>	<i>Galloway, L. Dunkeld.</i>
<i>Elphinston, L. Balmerinoch.</i>	<i>Falconer, L. Halkerton.</i>
<i>Stuart, L. Blantyre.</i>	<i>Hamilton, L. Belhaven.</i>
<i>Cranston, L. Cranston.</i>	

*Sandilands*



Landilands, L. Abercromby.	Lesly, L. Newark.
Rutherland, L. Duffus.	Nairn, L. Nairn.
Rollo, L. Rollo.	Churchill, L. Eymouth, now
Colvil, L. Colvil.	Duke of Marlborough in
Ruthven, L. Ruthven.	England.
Rutherford, L. Rutherford.	Kinnaird, L. Kinnaird.
Bellenden, L. Bellenden.	Abercromby, L. Glassford.

NOTE, Many of the above Families are of late forfeited, attainted, or failed in a Successor.



### T I T L E III.

*Of the Order to be observed in Electing a Commissioner, or Representative of a Shire or Stewartry.*

**B**Y the 52d A<sup>c</sup>t, Parl. 3. James I. in the Year 1425, it was ordained, That all Barons and Freeholders of the King, seeing they are holden to give Presence in the King's Parliament and General Council, should from thenceforth be bound to compear in proper Person, and not by a Proctor, except the Proctor alledge and prove a lawful Cause of their Absence.

But by 101 A<sup>c</sup>t, Parl. 7. James I. in the Year 1427, it was statuted, That the small Barons and free Tenants need not come to Parliament;



Parliament ; so that of each Sheriffdom, Two or more wise Men, according to the Largeness of the Shire, chosen at the Head Court, shall be sent to Parliament, excepting the Shire of *Clackmannan* and *Kinross*, out of each of which One only is ordained to be sent, and these were called Commissars of the Shire, but now Commissioners ; who, by the same Act are ordained to have the full power of the rest of the Sheriffdom, by a Commission under the Seal of the Sheriff, and of the other Barons of the Shire, to hear, treat, and finally determine all Causes to be proponed in Council or Parliament. This Act is ratified by Act 113. Parl. 11. *James VI.* in the Year 1587. and thereby it is further declared, That the Compearance of these Commissioners in Parliaments shall relieve the whole other small Barons and Freeholders of their Suit and presence in Parliament. It seems, till this Act was made, the former Law of King *James I.* had not been in uniform and constant Observance ; for by Act 75. Parl. 14. *James II.* in the Year 1457, the States thought it expedient, That no Freeholder under 20 *lib.* shou'd be constrain'd to come to the Parliament, as for presence, except he were a Baron, or were specially called by the King's Officer, or by his Writing. And by Act 78. Parl. 6. *James IV.* in the Year 1503, it is ordained, That from 11th March 1503, no

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Two Baron or Freeholder within 100 Merks of  
new Extent, be compelled to come personal-  
ly to the Parliament, except the King write  
for them. And all others above that Ex-  
tent of 100 Merks are required to come to  
Parliament, under the pain of the old Un-  
law.

There being in *Scotland* 33 Shires, the  
Freeholders in each, before and since the *Re-  
volution* in 1689, sent to the Parliament of  
*Scotland* Commissioners or Representatives in  
the following Number, set down in order of  
the Rolls of Parliament.

## REPRESENTATIVES

Before the Revolution.	Since the Revolution (f).
<i>Edinburgh</i> 2	4
<i>Haddingtoun</i> 2	4
<i>Berwick</i> 2	4
<i>Roxburgh</i> 2	4
<i>Selkirk</i> 2	2
<i>Peebles</i> 2	2
<i>Lanerk</i> 2	4
<i>Dumfreis</i> 2	4
<i>Wigtoun</i> 2	2
<i>Air</i> 2	4
	<i>Dunbartoun</i>

(f) The Act for an additional Representation in  
Parliament of the Greater Shires in *Scotland*, is da-  
ted June 14th, 1690.



## REPRESENTATIVES

Before the Revolution.		Since the Revolution	
Carried over	20	Carried over	
<i>Dunbartoun</i>	2		
<i>Bute</i>	2		
<i>Renfrew</i>	2		
<i>Stirling</i>	2		
15. <i>Linlithgow</i>	2		
<i>Perth</i>	2		
<i>Kincardin</i>	2		
<i>Aberdeen</i>	2		
<i>Inverness</i>	2		
20. <i>Nairn</i>	2		
<i>Cromerty</i>	2		
<i>Argyle</i>	2		
<i>Fife</i>	2		
<i>Kinross</i>	1		
25. <i>Forfar</i>	2		
<i>Bamff</i>	2		
<i>Kircudbright</i>	2		
<i>Southerland</i>	2		
<i>Caithness</i>	2		
30. <i>Elgin</i>	2		
<i>Orkney and 2</i>			
<i>Zetland 5</i>	2		
<i>Clackmannan</i>	1		
<i>Ross</i>	2		
In all	64	In all	

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But now by the 22d Article of the Treaty of Union, it is agreed, That 45 shall be the Number of the Representatives of Scotland, in the House of Commons, of the Parliament of *Great-Britain*, which His Majesty, by His Proclamation under the Great Seal of *Great-Britain*, is impowered to appoint to meet at such Time and Place as His Majesty shall think fit; which Time is to be less than 50 Days after the Date of such Proclamation.

And by the 8th Act of the Parliament of Scotland in 1707, made for settling the Manner of Electing these 45 Commoners, it is provided, That of the said 45 Representatives, thirty shall be chosen by the Shires or Stewartries, as follows, *viz.* One for every Shire and Stewartry, excepting the Shires of *Aberdeen* and *Caithness*, which shall chuse One by Turns, *Bute* having the first Election. The Shires of *Nairn* and *Cromarty*, which are also to chuse One by Turns, *Nairn* having the first Election. And in like Manner, excepting the Shires of *Clackmannan* and *Kinross*, which are to chuse one by Turns, and *Clackmannan* is to have the first Election.

And in case of Death, or Legal Incapacity of any of these thirty Members from the Shires and Stewartries, it is ordained, That the Shire or Stewartry who elected the said

C

Mem-



Member, shall elect another Member in his Place.

And seeing by the said 22d Article, an Act of Parliament of *Scotland* above-mentioned, a Faculty was reserved and given to the Parliament of *Great-Britain*, to make further Provision therein; pursuant whereunto, the first Parliament of *Great-Britain*, by their Act Entitled, *For rendering the Union of the two Kingdoms more intire and compleat*; have enacted, That when any Parliament should thereafter be called, the Representatives of *Scotland*, in the House of Commons of the Parliament of *Great-Britain*, shall be elected by the Authority of the Queen's Writs, under the Great Seal of *Great-Britain*, directed to the several Sheriffs and Stewarts, who, on Receipt thereof, shall give Notice of the Time of Election for the Knights or Commissioners: for their respective Shires or Stewartries; at which Time the Freeholders shall meet at the Head Burgh of their several Shires and Stewartries, and proceed to the Election of their Commissioner; and the Clerk of these Meetings, immediately after the Elections are over, is ordained to return the Name of the Person selected to the Sheriff or Stewart, who is to annex it to his Writ, and return it with the same into the Court out of which the Writ issued.



From the Narative or Preamble of the Act  
 3 Parl. 11. *James VI. Anno 1587*, it appears,  
 that all Freeholders of the King, under the  
 degree of Prelates and Lords of Parliament,  
 to be warned by Proclamation, to be  
 present at the choosing of the Commissioners  
 small Barons in Parliament. And by Act  
 3d. *Charles II. 1681*, to the Effect suf-  
 ficient Advertisement may be given to all  
 parties having Vote in Election, who are to  
 be present at the calling of a Parliament, the  
 Sheriffs or Stewarts are ordained to make  
 publication of the Call and Diet of Parlia-  
 ment, and of the Diet appointed for Election,  
 that at the Head-Burgh of the Shire or  
 County, upon a Market-Day, between 10  
 and 12 in the Forenoon: And also they are  
 ordained to make the like Intimation at  
 each Paroch-Church on *Sunday* immediately  
 thereafter; which Diets of Election are by  
 the said Act, appointed to be at least 12 Days  
 before the meeting of Parliament, that the  
 Commissioners elected may have Sufficiency  
 of Time to keep the Diet of the Parlia-  
 ment.

Upon the Receipt of the King's Writs or  
 Summons of Parliament, directed out of the  
 Chancery of *Great-Britain*, to the several She-  
 riffs or Stewarts in *Scotland*; the said She-  
 riffs issue out a Precept to their Officers, or-  
 dering them to make, in Manner prescribed



by the foresaid Act, Publication of the Calling and Diet of the Parliament of Great Britain, and of the Time the Freeholders are to meet at the Head-Burgh of the Shire or Stewarty, for electing their Representative, which by Stat. 12 *Ann Cap. 6.* in the Year 1710, Intimation must be at least three Days before the Day of Election, under Penalty to the Sheriff or Stewart of forfeiting 50 l. *st.*, one Moiety to the Crown, the other to the person who shall sue to be recovered in the Court of Session, by an Action summarily without abiding the Court of the Roll.

This Precept is executed before two Witnesses, and the Officers on the Day of the Meeting of the Freeholders report an Execution signed by them and the Witnesses; and there was no Sermon at any of the Churches the Officer nevertheless makes publication and returns a formal Execution, importing That at such a Church there was no Sermon on the *Sunday* the Day of the Execution.

If the Precept be not thus executed, if the written Execution be not formal, the Freeholders at that Meeting cannot proceed to a valid Election of their Representative so that another precept must be issued and duly executed.



By St. 7. *Hen. IV. 15. Anno Dom. 1406*,  
 is ordained, That in Order to the E-  
 lection, of Knights of Counties, for the Par-  
 liament, at the next County (a) to be hold-  
 en after the Delivery of the Writ of the  
 Parliament, Proclamation shall be made in  
 the full County, of the Day and Place  
 of the Parliament. And, by Stat. 7 and 8,  
*William III: 25*, in the Year 1697. it is en-  
 ded, That upon every Election to be made  
 of any Knight or Knights of the Shire, to  
 sit in Parliament, the Sheriff of the Coun-  
 ty in which such Election shall be made, shall  
 hold his County-Court for the same Election,  
 at the most publick and usual place of Election  
 within the said County, and where the same  
 has most usually been for 40 Years last past,  
 and shall there proceed to Election at the next  
 County-Court, unless the same fall out to  
 be holden within six Days after the Receipt  
 of the Writ, or upon the same Day, and  
 then he shall adjourn the same Court to some  
 convenient Day, giving 10 Days Notice of  
 Time and Place of Election.

On the Day appointed for the Election,  
 Freeholders meet and convene at the

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(a) The Word *County*, as commonly, so here is  
 to signify the County-Court, which the Sher-  
 iff keeps every Month, either by himself, or his  
 Deputy.



Head-Burgh of the Shire or Stewartry, in that Room where the Sheriff or Stewart Court is in use to be held between Mid Day and Two Afternoon; which Room is made patent to them, and all others are removed except such Persons as they call, and the Commissioner last elected, or in his Absence, the Sheriff or Stewart-Clerk asks the Freeholders the Question who should preside and who shall be Clerk to the Meeting, and collects the Votes, and declares the Names of the Persons chosen Preses, and Clerk to the Meeting.

By the Act of Parliament 1681, the whole Freeholders in each Shire or Stewartry, having the Election of Commissioners, were ordained to meet and convene upon the first Tuesday of May, 1682, at the Head-Burghs of the respective Territories, and to make up a Roll of all the Freeholders within the same, whether lying within Stewartries, not having Commissioners, or Baileries of Royalty, or Regality, or without the same, containing the Names and Designations of the Freeholders and others, having Right to vote, and expressing the Extent and Valuation of the Lands belonging to the several Freeholders, with Power to continue or adjourn the Meetings till the Roll of their Elections be fully compleated.



By the same Act, the Freeholders are appointed to meet and convene at the Head-Burghs of the Shires and Stewartries respectively, at the *Michaelmas* Head-Court yearly thereafter, and to revise the said Roll for Election, and to make such Alterations therein as have occurred since their last Meeting, from Time to Time; which Roll, is ordained to be inserted in the Sheriff or Stewart Court-books, particularly appointed for that End, according as they shall be stated each *Michaelmas*-Court. And at the Election of the Commissioners, either at the *Michaelmas*-Court, or at the calling of Parliaments; in case any Alteration has hapened in the Rolls of Election, since the last Meeting, the Person then coming to have Right to Vote, shall be inserted in the Roll; and there shall be no Objection admitted against any in that Roll, except such as shall be propounded before they begin to Vote to Election.

The Heritors and others craving Right to Vote, and to be inserted in the Roll of Electors, must have the Qualifications and Capacities following.



## SECTION II.

*Of the Fundamental Capacity of an Elector*

**B**Y *Stat. 5. Ann. 8.* it is declared, That none shall be capable to elect a Representative for Shire or Burgh in *Scotland* to the Parliament of *Great-Britain*, except such as were (at the Time of passing this Act, which was in the Year 1707.) capable by the Laws of *Scotland*, to elect Commissioners for Shires or Burghs, to the Parliament of *Scotland*.

By several Acts of the Parliament of *Scotland*, and by their Decisions given in discussing contraverted Elections, the Qualifications of an Elector are defined, but more particularly by *Act 21. Parl. 3. Ch. II.* in the Year 1683. All which may be sum'd up in the following Conclusions.

An Elector must be invest in Property of Superiority, and in Possession of a Forty Shilling Land of old Extent, holding of the King *in capite*, (that is, not supplying the Vice and Place of another who is immediate Superior, but is not entered to the Superiority, and refuses to enter) distinct from the Feu-duties in Feu-lands: But when the Extent of the Land is not known, the Lands must be of 400 *l.* of valued Rent, or must

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yearly Rent be worth 10 Chalders of Vic-  
tual, or 1000 lib. *Scots*, Feu-duties deduced (g).  
So that tho' one be infeft, yet if he be  
not in the actual Possession of Lands of the  
Holding, and Extent or Valuation, or year-  
ly Rent foreſaid, he cannot be enrolled.

Infeftment in a part of a Barony, tho' of  
the Holding foreſaid, gives no Right to  
Vote, except the Party can inſtruct that  
their Lands are retoured to ſuch a Propor-  
tion as puts them in the Terms of the Act of  
Parliament; or that they are of the Valua-  
tion, or of the yearly Rent above-written.

Confirmation by the King, of a Charter  
of Lands, of the holding, Extent or Valu-  
ation foreſaid, gives no Right to Vote, ex-  
cept the Infeftment be a *me*, and the Inſtru-  
ment of *Saſine* be confirmed and produced:  
For, the Confirmation of a Charter imports  
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(g) By Stat. 7 and 8. in the Year 1697. *William*  
III. c. 25. all Conveyances of any Meſſuages, Lands,  
Tenements, or Hereditaments in any County, City,  
Burgh, Town corporate, Port or Place, in Order to  
multiply Voices, or to ſplit and divide the Interſt  
of any Houſes or Lands, among ſeveral Perſons, to  
enable them to vote at Elections of Members to  
ſerve in Parliament, are declared to be void, and  
of no Effect; ſo that no more than one ſingle Voice  
ſhall be admitted for one and the ſame Houſe or  
Tenement. This Act is confirmed enlarged by Stat.  
*Ann. cap. 22.* in the Year 1712.



no more than the Confirmation of a personal Obligation.

Husbands, for the Freeholds of their Wives or for their own Right, when by the Courts of *Scotland*, they are Liferenters of Lands of the Holding and Extent or Valuation, of the yearly Rent foresaid, have Right and Title to vote.

As also Liferenters of Lands of the Holding &c. foresaid, have Right to vote, provided their Right be constitute by Infeftment; but that a Liferenter, whose Right is constitute by Reservation in another's Right, or by personal Obligation, cannot vote.

Wherefore a Fiar has no Vote, when the Liferenter compares and claims his Vote, unless the Fiar have distinct Lands of the Holding, &c. foresaid.

The foresaid Heirs of Freeholds, tho' their Lands are adjudged, and tho' the Creditors be infeft, have Right to Vote all the Years of the Currency of the Legal; and tho' the Lands are burdened with Infeftments of Reliet, or for Payment of Sums above their Value: So that these Persons infeft for Reliet, or for Payment of Sums, have no Right to Vote, but only the Granters of the said Rights, their Heirs or Successors.

The Right of Voting is competent to apparent Heirs who have not renounced, or whose Predecessors were not denuded, provided

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ed they are by virtue of their Predecessors Right, in Possession of Lands of the Holding, extent, Valuation, or yearly Rent foresaid: nevertheless, an apparent Heir claiming Right to the Estate of his Grandfather on the Mortgager's Side, cannot vote, until he be actually admitted Heir; because, 'tis in Law presumed that there is an Heir Male, till the Contrary be proven by a Service.

Proper Wadsetters (*b*) have Right to Vote, until a Decree Declarator or voluntar Redemption or Renunciation be produced.

To give an Appriser or Adjudger Right of Voting, it is required, That the Apprising or adjudication be expired; and next, that he be first infest: In which Case, the Apprising is not questionable on Pretence of an Order of Redemption, until a Decree following thereon is produced; wherefore a second or posterior Appriser cannot Vote, till the Lands be sold, and each Creditor's Share known, that

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(*b*) By *Stat. 7, and 8. William III.* — 25. No Person shall be allowed to have any Vote in Election of Members of Parliament, by Reason of any Trust, Estate or Mortgage, unless such Trustee or Mortgagee be in actual Possession, or Receipt of the Rents and Profits of the same Estate; but that the Mortgager or *Cetui qui Truste* in Possession, shall and may vote the same Estate, notwithstanding such Mortgage Trust.



that the Proportion of the retoured Extent Valuation or yearly Rent may appear.

Persons interdicted seem to be debarred from Voting, at least from being elected ; for how should a Man who is unfit to manage his private Concerns, be entrusted with the weighty Affairs of a whole People : But this may be thought to hold only, when the Interdiction is *Causa cognita*, because very judicious Men towards expediting their private Interest, sometime voluntarily interdict themselves.

By *Act 2. Parl. 1. Sess. 7. 1698. William III* Persons having Protection from the personal Diligence of Creditors, during the Currency of these Protections, are declared incapable to chuse a Member of Parliament.

By *Act 16. Parl. 2. James IV. Anno 1489* The free Tenants holding of the Prince, the Duke of *Rothsay* and Steward of *Scotland*, are ordained to compear and answer in the Parliament, with their Suit and Presence, until the King have a Son, and Suit-Rolls are ordained to be made, and endure till the Prince be born ; wherethro' the Vassals of the Principality holding of the King, during the Non-existence of a Prince, and possessing Lands of the Extent, Valuation or yearly Rent above-exprest, have Right to vote in the Election of a Member of Parliament for the Shire in which their Lands ly.



In like Manner, by *Act 14. Parl. 1. Charles* 1633, it is declared, That the King and his Successors have undoubted Right to the Superiority of all Lands, Baronies, Mills, Woods, Fishing, Towers, Fortalices, Manour-places, and haill Petinents thereof, pertaining to whatsoever Abbacies, Priories, Priories, or whatsoever other Benefices, of whatever Name or Designation the same be, erected to Temporal Livings, before or after the general Annexation of Kirklands, in *July 1587*; and to the whole Casualties of these Superiorities, not dispon'd before *17th January 1627*. As also, by *Act 29. Parl. 1. Sess. 2. William and Mary, anno 1690*, it is ordained and declared, That the Superiorities of Lands, Mills, Fishings, heritable Offices and others, which were formerly held of the Prelates or Bishops, or of their Chapters, or of Deans, Sub-deans, or Arch-deacons, or of any other beneficed Person before; and at the abolishing of these Offices and Chapters, do now pertain and belong to their Majesties, and their Successors: and that the Vassals of these Lands, &c. which formerly held of the said Prelates, Bishops and their Chapters, Deans and others aforesaid; shall in all Time coming hold the same of their Majesties and their Successors, in the same Way and Manner of holding, as they formerly held of the said Prelates, &c. conform to the Rights and Inseiments made to the said



said Vassals ; wherefore such Vassals, who by virtue of Charters and Precepts from His Majesty or His Royal Predecessors, are infeft in Church-lands, of the Extent, Valuation or yearly Rent above-mentioned, have Right to claim a Vote in the Election of Commissioners for the Parliament.

The Elector must be Major, and of the Protestant Religion ; for by *Statute 5. Ann.* being the *Union Act*, it is declared, That none shall be capable to elect a Representative for any Shire or Burgh in *Scotland*, unless 21 Years of Age compleat, and Protestant ; excluding Papists, or such who being suspected of Popery and required, refuse to swear and subscribe the *Formula* contained in the 3 *Act*, made in the 8 and 9 Sessions of King *William's* Parliament in *Scotland*, (which see *Page 22.*)

By *Stat. 12. Ann. Cap. 6.* in the Year 1713 it is enacted, 'That after the Determination of that Parliament, which was the last Parliament of the Queen's Reign, no Conveyance or Right whatsoever, whereupon Infeftment is not taken, and Seisin registred, in one Year after the *Teste (a)* of the Writs for calling a new Parliament

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(a) *Test*, is a Word commonly used in the last Part of every Writ, wherein the Date is containd, which begins with these Words, *Teste meipso.* if it be an original Writ ; or if judicial, *Teste Matthæo Hale milite* or *Johanne Vaughan milite*, according to the Court whence it issues.



ment, *shal* entitle the Person so infest, to vote, to be elected in any Shire or Stewartry of *Scotland*; and in case any Election happen during the Continuance of a Parliament, no Conveyance or Right whatsoever, whereupon Intendment is not taken one Year before the Date of a Warrant for taking out a new Writ, shall enable the Person so infest to vote, &c. And if at any of the Electors present, and suspecting another to have his Estate in Trust, may require the Preses of the Meeting to tender him this Oath.

*A. do in the Presence of God, Declare and Swear, That the Lands and Estate of B. for which I claim to give my Vote in this Election, are not conveyed to me in Trust, or for the Benefit of any other Person whatsoever: And I do swear before God, That neither I nor any Person to my Knowledge, in my Name, or by my Allowance, hath given, or intends to give, any Promise, Obligation, Bond, Backbond, or other Security, for redisponing or reconveying the said Lands or Estate any Manner of Way whatsoever. And this is the Truth, as I shall answer to God.* If the Elector refuse to swear and subscribe the said Oath, he shall neither vote, nor be elected.

Besides the above Oath, any other Objections allowed by the Laws of *Scotland*, may be made against such Elector.

No



No Infeftment taken upon any redeemable Right, (except proper Wadsets, Adjudications or Apprisings, allowed by an Act relating to Elections in 1681) shall entitle the Person so infeft to vote, &c. And that no Person who hath not been inroll'd and voted at former Elections, shall be inroll'd or admitted to vote at any Election, except he produce a sufficient Right to qualify him to vote to the Satisfaction of the Free-holders formerly inroll'd or the Majority there present; and the returning Officers shall make their Returns, by the Majority of the Free-holders inroll'd.

The Right of an apparent Heir voting by virtue of the Infeftment of his Predecessor, and the Right of the Husband by virtue of the Infeftment of his Wife, shall be always saved and reserved to them as formerly.

Nevertheless, any Conveyance or Right which by the Laws of *Scotland*, is sufficient to qualify a Person to vote in the Election of Members to serve in Parliament for Shires or Stewartries, whereupon Infeftment is taken before the first of *June* 1713, shall entitle the Person so infefted, to vote at the next Election for Members to serve in Parliament.

However, no Husband shall vote by virtue of any Infeftment of their Wives, who are not Heiresses; or if the Husband hath no Right of Property in the Lands, on Account whereof his Vote is claim'd.



The eldest Sons of Noblemen, who being to succeed their Father in Dignity and Honours, tho' they be infest in Lands holden of the Crown, of the Extent, Valuation or yearly Rent above-exprest; yet they have not a Vote in the Election of a Commissioner from the Shire, because they are *quasi* Peers of the Realm, and have a Precedency allotted to them: For, the eldest Son of a Duke takes Place of an Earl; and the eldest Son of a Marquess takes Place of a Viscount; and the eldest Son of an Earl takes Place of a Lord or Baron of Parliament: These eldest Sons did, and by their Birth enjoy a Privilege to sit in the Parliament of *Scotland*, and to hear the Transactions in the Meetings of the Estates of the Kingdom, in order to fit them for being worthy Members of that *August* Assembly, when upon their Father's Decease, they should sit in their Bench: And in ancient Times, they were allowed to Sit and Vote in Parliament, by Proxies for Peers.

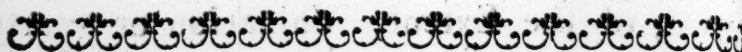
Albeit, the Act 101. *Parl.* 6. *James I.* and 114. *Parl.* 11. *James VI.* require, That the Free-holders qualified by Law to elect, should have their actual Dwelling and Residence within the Shire; yet by Act of Parliament in the Year 1681, it is declared, That

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Non-residence shall be no sufficient Object  
on (i).



### SECTION III.

#### *Of the Legal Capacity of an Elector.*

**A** Man attainted of Treason or Felony, de-  
nounced Fugitive from the Law, can-  
not be an Elector; albeit one denounced Re-  
bel, and registred to the Horn for a Civil  
Cause, is not precluded from Voting.

By *Act 6. Parl. 1. Sess. 4. William and Mary*  
in the Year 1693. and *Act 1. P. Ann. anno 1702*  
it is statuted and ordained, That all Electors  
of Members of Parliament, shall swear the  
Oath of Allegiance, and sign the same, with  
the Assurance, in Presence of the Meeting  
before they proceed to Election.

The Oath of Allegiance.

**I** A. B. do sincerely promise and swear, That  
I will be Faithful, and bear true Allegiance  
to His Majesty King George. So help me God.

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(i) By *Stat. 1. Henry V. in the Year 1414*, it is  
statuted, That the Knights for Shires shall be re-  
sident in the County for which they are chosen, the  
10th of the Date of the Writ of the Summons, so that  
they be that chuse them: Also, Citizens and Bur-  
ghesses shall be resident in, and Free of the Cities  
and Burghs for which they are chosen.



## The Assurance.

A. B. do in the Sincerity of my Heart, acknowledge and declare, That His Majesty King George, is the only lawful undoubted Sovereign of this Realm, as well de jure, that is, of Right, as de facto, that is, in the Possession and Exercise of the Government: And therefore, I do sincerely and faithfully promise and engage, That I will, with my Heart and Hand, Life and Goods, maintain and defend His Majesty's Title and Government, against the pretended Prince of Wales, and his Adherents; and all other Enemies, who, either by open or secret Attempts, shall disturb or inquiet His Majesty in the Possession and Exercise thereof.

And by Statute 6. in the Year 1708. Ann. it is enacted, That every Person who shall refuse to take and swear the Oath of Abjuration, (which see P. 15.) or being a Quaker shall refuse to declare the Effect thereof, upon his solemn Affirmation, as directed by Statute 7. William III. 34. (k) to be administered by the Sheriff,

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Sheriff,

(k) By Stat. 7, and 8. William III. 34. and Stat. 13. William III: 4. it is enacted, That after the 4th of May 1696, every Quaker within the Kingdom of England, Dominion of Wales and Town of Berwick, who shall be required, upon any lawful Occasion, to take an Oath, where by Law an Oath is required, shall, instead of the usual Form, be permitted to make his solemn Affirmation or Declaration in these words, viz.



Sheriff, or by the President of the Meeting at any Election of Members to serve in the House of Commons, or any Place in *Great-Britain*, or Commissioners for chusing Burgesses for any Place in *Scotland*, at the Request of any Candidate or other Person present, shall not be capable of giving any Vote for the Election of any such Member to serve in the House of Commons, for any Place in *Great-Britain*, or Commissioner to chuse a Burgess in any place of *Scotland*.

## S E C T

*I A. B. do declare in the Presence of Almighty God, the Witness of the Truth of what I say,*

Which shall be adjudged, and taken to be of the same Force and Effect, to all Intents and Purposes in all Courts of Justice, and other Places, as if such Quakers had taken an Oath in the usual Form.

If any Quaker making such solemn Affirmation or Declaration, shall be lawfully convicted, wilfully and corruptly, to have affirmed or declared any Matter or Thing, which if the same had been in the usual Form, would have amounted to wilful Perjury, he shall incur the same Penalties, as by the Laws and Statutes of this Realm, are enacted against Persons convicted of wilful Perjury.

No Quaker, or reputed Quaker, shall, by virtue of this Act, be qualified to give Evidence in any Criminal Cause, to serve on a Jury, or bear Office or Place of Profit in the Government.



## SECTION IV.

*of the Order to be observed in objecting against Voters, and of that which is to be noticed concerning the Votes.*

IF any Person, who has not the fundamental Qualifications above set down, shall claim to be insert in the Roll, which shall give occasion to Objections; it is by the said Act, ch. 1681, statuted, That no Objection shall be admitted, but such as shall be propounded before they begin to the Election; and if the Objector shall not be cleared, and shall not acquiesce, they are allowed to take Instruments, containing their Objections against the admitting any Person to be insert in the Roll, or against excluding any from it. And no other objection can be propounded in Parliament, but that shall be contained in these Instruments.

By the same Act it is declared, That if the Persons objected against do compare before the Parliament, and instruct their Right to vote, the Objector shall pay their Expences, and be either Fined in 500 Merks Scots; and if the objection be sustained in Parliament, the Objectors appearing, shall have their Expences,



and the Party objected against, shall be Fined in 500 Merks.

In Case these Objections had been made when a Parliament was not called, a particular Diet was to be appointed by the Meeting, and intimated to the Parties contending, to attend the Lords of Session for the Determination, who should judge the same at the Diet appointed, summarily according to Law.

These Objections, with the Answers made thereto, are by the Clerk of the Meeting put into Writing; and if the Party objected against or the Objector, be not of themselves satisfied with one another's Arguments, Instruments are taken in the Hands of the Clerk to the Meeting, or other Notar, in which the Objections and Answers are inserted, and the Objector protests against the Vote of such a Meeting as being incapable; for the Meeting it has no Jurisdiction for determining such Controversies, which were to have been decided either by the Parliament or Lords of Session as said is.

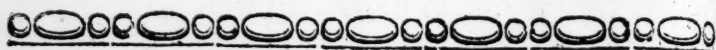
When all the Objections and Answers thereunto are propounded and marked, the Meeting proceeds to the Election, in which every one of those objected against may vote upon the Peril.

By the Claim of Right for *England*, Stat. *W. and M. Sess. 2.* 2. It is declared, That



Election of the Members of Parliament  
 right to be free. Wherefore,  
 By *Stat. 5. W. and M. 20.* no Collector,  
 Supervisor, Gauger, or other Officer or Per-  
 son whatsoever, concerned or employed in the  
 charging, Collecting, Levying, or Managing  
 the Duties of Excise, or any Branch or Part  
 thereof. And by *Stat. 12. and 13. W. 3. 10.*  
 no Commissioner, Collector, Comptroller,  
 Searcher, or other Officer or Person concern-  
 ed or employed in discharging, collecting, or  
 managing the Customs or any Branch thereof,  
 shall, by Word, Message or Writing, or in any  
 other Manner, endeavour to perswade any  
 Elector to give or dissuade any Elector from  
 giving his Vote for the Choice of any Person  
 to be a Knight of the Shire, Citizen, Burgess or  
 Commoner of any County, City, Burgh or Cinque-  
 port. And every Officer or other Person  
 offending therein, shall forfeit the Sum of 100  
 s. the one Moiety thereof to the Informer, the  
 other to the Poor of the Parish, where such  
 offence shall be committed, to be recovered by  
 any Person that shall sue by Action of Debt, Bill,  
 Plaint, or Information in any of their Majesties  
 Courts of Record at *Westminster*, in which no  
 Joinder, Protection, Privilege or Wager of Law,  
 more than one *Imparlance* shall be allowed;  
 and every Person convicted on such Suit, shall be  
 forever after incapacitated to bear any Of-  
 fice or Place of Trust under the Crown.





## SECTION V.

*Of the Persons Eligible, and by Law qualified to represent in Parliament a Shire or Burgh in Scotland.*

**T**HE Parliament of Scotland consisted of Three Estates, the Clergy, the Barons and the Burgeses, and to the End, that these Three there might be no Confusion ; by *Act 33. Parl. 11. James VI. Anno 1587*, it was statuted, That no Person should take upon him the Function, Office or Place of all the Three Estates, or moe of them, but should occupy the Place of that Estate wherein he commonly professed himself to live, and whereof he took his Stile or Title : Which Act was occasioned by the Factions in the Reign of *Queen Mary* ; the Popish and Protestant Parties contending who should prevail in Parliament. The Popish Clergy, (who were very numerous in Parliament, since all the Bishops, Monks and Abbots did sit there as Churchmen,) each of them who had Lands and Heritage craved two Votes, one as Churchmen, and another as Barons ; to prevent which for the future, this Act was made, discharging any of the



the three Estates to take upon him the Office of  
 the three Estates, or of any two of them,  
 By Stat. 6. Ann. 7. Anno Dom. 1708, it is  
 enacted, That every Person disabled to be  
 elected, or to sit or vote in the House of Com-  
 mons of any Parliament of *England*, shall be  
 disabled to be elected, or to sit or vote in the  
 House of Commons, of any Parliament of  
*Great-Britain*.

An *Alien* cannot be elected a Member of  
 the Parliament, because he is not the King's  
 lige-subject; and that albeit he be made  
 denizen by Letters, Patents, &c. for thereby  
 he is made *quasi seu tanquam Ligeus*: But that  
 he will not serve, for he must be *Ligeus revera*,  
 and not *quasi*, &c. And such an one hath been  
 allowed by the House of Commons, because  
 he can hold no Place of Judicature; never-  
 theless, an *Alien* naturalized by Parliament,  
 is eligible to this or any other Place of Judi-  
 cature. But by Stat. 12. and 13. W. 3. 2. Anno  
 Dom. 1701. It is enacted, That after the Li-  
 beration of the Crown to the Princess So-  
 phia of *Hanover*, no Person born out of the  
 Kingdoms of *England*, *Scotland* or *Ireland*, or  
 the Dominions thereunto belonging, (altho'  
 he may be Naturalized or made Denizen, except  
 such as are born of *English* Parents) shall be  
 capable to be a Member of the House of Com-  
 mons,

By



By *Stat. 23. Henry VI. Ch. 15. Anno Domini* 1445. It is ordained, That the Knights of the Shires for the Parliament to be chosen shall be notable Knights of the same Counties for the which they shall be chosen; or otherwise such notable Esquires or Gentlemen born in the same Counties, as shall be able to be Knights, and no Man to be such Knight which standeth in the Degree of a Yeoman or under. And in *North-Britain*, he who is incapable to vote in the Election of a Representative to the Parliament, cannot be elected. And by the Narrative of *Act 11. Parl. Ja. VI.* in the Year 1587, the Freeholders are directed to chuse wise Men, being the King's Freeholders, resident Indwellers in the Shire, of good Rent, and well esteemed; to be Commissioners to the Parliament for the Shire. But by the Act in the Parliament 1688 Non-Residence is no more an Objection

None of the Judges of the *King's-Bench*, of *Common-Pleas*, or Barons of the Exchequer in *England*, can be chosen Knight, Citizen or Burgeſs of Parliament, because they are Assistants in the House of Lords; nevertheless any who have Judicial Places in the Court of *Wards*, Court of *Dutchie*, or other Courts Ecclesiastical or Civil, being no Lord of Parliament, are eligible. Agreeable whereunto, the Lords of Session, Lords Commissioners of Justice, and Barons of the Exchequer in *Scotland* cannot be chosen to be a Member of the House



Commons, by Reason of their Offices, which require their constant Attendance in *Scotland*.

A Sheriff of a County cannot be elected for that County in which he is Sheriff, tho' he may be chosen for another County, as my Lord Justice *Coke* observes, That at the Parliament holden, 1 *Caroli Regis Anno Dom. 1625.* the Sheriff of the County of *Buckingham* was chosen Knight for the County of *Norfolk*, and returned into the *Chancery*; and having a *Sub-na* out of the *Chancery* served upon him at the Suit of the Lady *C. pendente Parlamento*, & 11<sup>th</sup> on Motion he had the Privilege of Parliament allowed unto him, by the Judgment of the whole House of Commons.

As the eldest Sons of Noblemen, by the Laws of *Scotland*, cannot elect; so neither should they be elected Members for the Parliament of *Scotland*; and albeit, by the Laws of *England*, they may be Members of the House of Commons, yet in the Parliament holden the 6th Year of the Reign of Queen *Anne*, the Year 1708, it was found by the House of Commons, That the ancient Custom in *Scotland* obtains with Respect to the Members that come from *Scotland*; and therefore, a Nobleman's eldest Son cannot be elected to represent in Parliament any Shire in *Scotland*.

Majors, or Bailliffs of Towns incorporate are eligible.

Any of the Profession of the Common-Law, and in the Practice thereof, is eligible.

My



My Lord Chief Justice *Coke* observes, That at a Parliament holden at *Coventry*, Anno *Henry IV.* in the Year 1405. the Parliament was summoned by Writ and by Colour of an Ordinance in the House of Lords. In 46. *Ed. III.* the King forbade that any Lawyer should be chosen Knight, Citizen or Burgess; by Reason whereof this Parliament was fruitless, and never a good Law made thereat: And therefore called *Indoctrinatum Parliamentum*, i. e. The Lack-learning Parliament. And seeing these Writs were against Law, Lawyers ever since (for the great good Service of the Common-wealth) have been eligible. For as it hath been said, the Writs of Parliament cannot be altered, without an Act of Parliament; and albeit the prohibitory Clause had been inserted in the Writ, yet, being against Law, Lawyers were of Right eligible, and might have been elected Knight, Citizen or Burgess in that Parliament of 6. *Henry IV.*

By special Order of the House of Commons, the Attorney-General is not eligible to be a Member of the House of Commons.

A Man attainted of Treason or Felony &c. or Fugitive from the Law, is not eligible; for concerning the Election of Knights the Words of the Writ bear, *Duos milites galeatos et armatos, et duos civis et burgenses, et duos de villis cinctos magis idoneos & discretos eligi* &c.

And for the Election of Citizens and Bur-



...The Words of the Writ be, *Duos, &c.*  
*discretioribus & magis sufficientibus*, which  
 ... cannot be said to be, when they are  
 ... gitive, or are attainted of Treason or Fe-  
 ... y, &c.

Albeit a Man be denounced to the Horn  
 ... Registred for a Civil Cause, he may ne-  
 ... theless be chosen and elected to be a Mem-  
 ... of Parliament.

A Person interdicted cannot be elected.

By *Act 22, Parl. W. III. Sess. 7. 1698*,  
 ... having Protection from the personal Di-  
 ... of Creditors, during the Currency of  
 ... Protections, and till he renounce the  
 ... nefit thereof, is incapable to be chosen a  
 ... member of Parliament.

None of the Clergy, though he be of the  
 ... vest Order, are eligible to be Knight,  
 ... ize, or Burgesses of Parliament, because  
 ... y are of another Body, *viz.* Of the Con-  
 ... ation in *England*. And in *Scotland*, That  
 ... Majesty's loving and good Subjects may  
 ... faithfully instructed in the Doctrine of  
 ... ir Salvation; and that the Ministers of  
 ... d's Word and Sacraments may the bet-  
 ... and more diligently attend upon their own  
 ... arges and Vocation, it is by *Act 133, Parl.*  
 ... a. VI. 1584, statuted, That they faithfully  
 ... it thereupon, to the Comfort and Edifica-  
 ... of the Flock committed to them; and  
 ... at none of the Ministers of the Gospel, or  
 ... who



who shall at any Time thereafter be admitted to that Function, shall in any ways accept, use and administrate any place of Jurisdiction, in whatever Cause Civil or Criminal. By which Law, the present Clergy in *Scotland* are precluded from being Members of Parliament.

And by *Stat. 7, W. III. 4. Anno Domini 1696.* no Person to be elected to serve in Parliament for any County, City, Town, Burgh, Port or Place within *England, Wales* or *Berwick upon Tweed*, after the Test of the Writ of Summons to Parliament, or the suing out, or ordering of the Writ or Writ of Election, upon the calling or suing of any Parliament hereafter, or after any such place becomes vacant in the Time of the present or any other Parliament, shall do by himself, or by any other Way or Means on his or their Behalf, or at his or their Charge, before the Election for any County, City, Town, &c. directly or indirectly give, present, or allow to any Person or Persons having Voice or Vote in such Elections, any Money, Meat, Drink, Entertainment, or Provision; or make any Present, Gift, Reward, or Entertainment; or shall at any Time make Promise, Agreement, Obligation, or Engagement, to give or allow any Money, Meat, Drink, &c. to, or for any Person or Persons in particular, or to any such

County



County, City, Town, &c. in general, or to, for their Use, Advantage, Benefit, Employment, Profits or Preferments, of any such Person or Persons, Place or Places in Order to be elected, or for being elected to serve Parliament for any such County, City or Town, &c.

Every Person or Persons so doing, giving, presenting or allowing, making, promising, engaging, acting or proceeding, shall be disabled and incapacitated upon such Election to serve in Parliament, for such County, City, or Place; and such Person shall be deemed and taken no Member in Parliament, but shall be declared and enacted to be to all intents, Constructions and Purposes, as if they had been never returned, or elected Members for the Parliament.

By Stat. 5 and 6. Anno Dom. 1695. W. and M. 2. 7. it is enacted, That no Member of the House of Commons, shall, at any Time, be concerned directly or indirectly, or any Person or Persons in Trust for him, in the farming, collecting or managing any of the Duties, or other Aids that shall be granted by Act of Parliament, except the Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise, and Commissioners of the Land-Tax, not exceeding the present Number in each Office and Commission.

By



By *Stat. 11 and 12, W. 3 ch. 2. Anno Domini 1700*, it is enacted, That if any Member of the House of Commons, during the Time of his being a Member of Parliament, his Deputy or any other in Trust for him, shall take, enjoy, or execute any Office, Place or Employment, touching or concerning the farming, managing or collecting the Duty of Excise, or determining Appeals concerning the said Duty; or controlling or auditing the Accompts of the same, such Persons are declared and enacted to be absolutely incapable of sitting, voting or acting as a Member of the House of Commons in such Parliament.

And by *Stat. 12 and 13, W. 3. ch. 2*, it is enacted, That no Member of the House of Commons shall be capable of being Commissioner or Farmer of the Customs, or of holding or enjoying in his own Name or in the Name of any other Person in Trust for him; or for his Use or Benefit, or of executing by himself or his Deputy, any Office, Place or Employment, touching or concerning the farming, collecting or managing the Customs.

If any Member of the House of Commons shall, during the Time of his being a Member of Parliament, by himself or his Deputy, or any other in Trust for him or for his Benefit, take, enjoy, or execute any



Place or Employment, touching or concerning the farming, managing or collecting the Customs; such Persons are declared and enacted to be absolutely incapable of sitting, voting or acting as a Member of the House of such Parliament.

By *Stat. 4 and 5. Anne ch. 8.* it is enacted That no Person who shall have, in his own Name, or in the Name of any Person or Persons in Trust for him, or for his Benefit, any new Office, or Place of Profit whatsoever under the Crown, which, at any Time hereafter shall be created or erected; nor any Person who shall be a Commissioner or Sub-commissioner of the Prizes, Secretary or Receiver of the Prizes, nor any Comptroller of the Exchequer, nor any Comptroller of the Accounts of the Army, nor any Commissioner of Transports, nor any Commissioner of the Sick and Wounded, nor any Agent to any Regiment, nor any Commissioners for Wine-Licenses, nor any Governour, nor Deputy-Governour of any of the Plantations, nor any Commissioner of the Navy employed in any of the Out-ports, nor any Person having any Pension from the Crown during Pleasure, shall be capable of being elected, or of sitting, or voting as a Member of the House of Commons, or any Parliament which shall be hereafter summoned and holden.

No greater Number of Commissioners shall be made for the Execution of any Of-

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fice,



fice, than have been employed in the Execution of any such from the first Day of the Session.

Nothing contained in the above Act shall extend or be construed to extend to any Member of the House of Commons, being an Officer in Her Majesty's Navy or Army who shall receive any new or other Commission in the Navy or Army respectively.

If any Person hereby disabled or declared to be incapable to sit or vote in any Parliament hereafter to be holden, shall nevertheless be returned as a Member to serve for any County, City, Town or Cinqueport in any such Parliament, such Election and Return are hereby enacted and declared to be void, to all Intents and Purposes whatsoever: And if any Person disabled, or declared incapable by this Act to be elected shall presume to sit or vote as a Member of the House of Commons, in any Parliament to be hereafter summon'd, such Person, so Sitting or Voting shall forfeit the Sum of 500 *l.* to be recovered by such Person as shall sue for the same by Action of Debt, Bill, Plaint or Information, where no Essoin, Protection or Wager of Law shall be allowed, and only one Imparlance.

By *Stat. 2, 3 and 6. An. ch. 25.* it is enacted, That no Register for the registration of Memorials of Deeds, Conveyances and Wills



Ex within the East-riding and West-riding of  
 ay County of York, or Town and County  
 t that Kingston, upon Hull, or his Deputy for the  
 Mem me being, be capable of being chosen a  
 ng a member to serve in Parliament.

By Stat. 5 and 6. William and Mary 7.  
 e Commissioners of the Treasury, and the  
 Army Officers and Commissioners for managing the  
 Com Customs and Excise, not exceeding the Num-  
 ively. at that Time, in each Office and Com-  
 declar tion ; and the Commissioners of the Land-  
 n an x may be elected and chosen Members  
 all r Parliament. And by the 4 and 5. Anne  
 o fer the Officers in the Navy or Army, who  
 uepor l receive any new or other Commission in  
 n an Navy or Army respectively, may be cho-  
 red Members of the House of Commons.

wha is by Statute 5 and 6. William and Ma-  
 or d 10. Anno Dom. 1704, enacted, That it  
 electe and may be lawful to, and for any Mem-  
 Men or Members of the House of Commons,  
 ny Pa be a Member or Members of the Corpo-  
 ch Pa ration of the Governour and Company of  
 ult t Bank of England.

ch Pa and by Stat. 6. Aane 7. Anno Dom. 1708.  
 tion e Commissioners for disposing of 398085  
 where to *lb.* and other Sums arising to Scot-  
 w sh by Way of Equivalent, to the Purpo-  
 e. s, mentioned in the Articles of Union, shall  
 t is e Reason thereof, or of any other Com-  
 strati on for disposing thereof, or of any part of



the same, or the Execution of such Commission, not be disabled from being a Member of Parliament.

By Stat. 1. *Georg. cap. 56.* it is enacted That no Person having any Pension from the Crown, for any Term or Number of Years either in his own Name, or in the Name of any other Person in Trust for him, or for his Benefit, shall be capable of being elected, or chosen a Member of, or for sitting or voting as a Member of this present, or any future House of Commons, which shall be hereafter summoned.

If any Person who shall have such Pension at the Time of his being so elected, at any Time after, during such Time as he shall continue to be a Member of the House of Commons, shall presume to sit or vote in that House, in such Case he shall forfeit 20 *l.* for every Day in which he shall so sit or vote there, to him who shall sue for the same in any of the Courts at *Westminster* and the Monies so forfeited shall be recovered by the Person so suing, with full Costs of Suit, by Action of Debt, &c.



## SECTION VI.

*of the Commission granted by the Freeholders, to the Person elected, and of what is to be observed in the due signing thereof.*

WHEN the Objections against the Freeholders claiming Vote in the Election, and to be insert in the Roll of the Electors, are ended, the Oaths appointed by Law, for qualifying Electors, are administered by the Preses of the Meeting, to the Freeholders present: After which, the Meeting proceeds to the Election, and the Votes are collected in Order of the Roll, and are marked by the Clerk of the Meeting; and the Freeholder capable to be elected, who has Plurality of Votes, is declared the Commissioner and Representative of the small Barons and Freeholders in that Shire or Newwartry, and he gets a Commission for that end, in Relation to which,

By *Act 101 Parl. 7. James I. Anno 1427.* is statuted, That the Commissioners shall have full and whole Power from the remanent Freeholders in the Sherifsdome, under the witnessing of the Sheriff's Seal, with the Seal of divers Barons of the Shire, to hear,



treat, and finally determine all Causes to be proponed in Parliament.

And by *Act* 113. *Parl.* 11: *James V* Anno 1587. it is ordained, That the Commissioners should be authorized with sufficient Commissions of the Sherifsdoms from which they come, sealed and subscribed by Six at least, of the Barons and Freeholders.

Sir *George Mackenzie* in his *Observations* says, That in controverted Elections, if neither of the Competitors have Six, a new Election will be ordered, because unlawful. Yet, if all the Barons were cited, and fewer than Five were only present, it might be thought, that a Commission signed by the Five, would be sufficient; because the Absence of Barons should not prejudice the Shire. However, in the Convention 1678, many were inclined to think, a new Election should be ordered in that Case be ordered, because of this Absence, and that the Shire should not have a Vote in Parliament, who would not send legal Commissioners.

And by *Act* 27. *Parl.* 15. *James VI.* Anno 1597. 'tis statuted, That no Barons shall be received as Commissioners at any Parliament, be received as Commissioners from any Shire, except they bring and produce sufficient Commissions granted to them in a full Convention of the whole Freeholders in the several Sherifsdoms, and authorized with the Subscription of a great

Num



Number of the Barons then present, and of the Clerk to the Meeting.

The Commission must be sign'd in a full Convention, at which the Signers must have been present, and voting: For in the Parliament anno 1681, at discussing the controverted Elections of the Commissioners of *Haddingtoun* Shire, no Votes were sustained, but of those who voted and signed the Commission before the Meeting was dissolved: And the Votes of these who came immediately thereafter, were not sustained, tho' the Preses returned with some of the Number. But in the Elections of *Berwick* Shire, it was found by the same Parliament, That a Person was capable to vote, albeit he was detain'd Prisoner, by Misinformation of one of the Competitors; having given to the Meeting, an Account of the Way and Manner of his Imprisonment, and declared to them his Vote; and after his enlargement, having immediately signed the Commission.

By *Stat. 7. Henry IV. 15.* it is ordained, that after the Election, the Names of the Persons chosen, be they present or absent, are to be wirtten in an Indenture, under the Hands of all them that did elect, which is the present Practice in all the Shires of *Scotland*.

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T I T L E



## T I T L E IV.

*Of the Order to be observed in electing the Citizens or Burgeses for the Cities and Burghs in Scotland, and of the Qualifications of the Commissioners to choose, and of the Person elected.*

**T**HERE are in Scotland 66 Cities and Burghs, who sent Representatives to the Parliament of Scotland; and every one of these Burghs sent one Member chosen by the common Council of the said Burgh, except that the City of *Edinburgh* sent two Commissioners: So that this State of Burgeses consisted of Sixty Seven Members sent from the following Burghs, ranked in the Rolls of Parliament, thus,

<i>Edinburgh</i>	2	<i>Glasgow</i>
<i>Perth</i>	1	<i>Air</i>
<i>Dundee</i>	1	10 <i>Haddingtoun</i>
<i>Aberdeen</i>	1	<i>Dysert</i>
5 <i>Stirling</i>	1	<i>Kirkcaldy</i>
<i>Linlithgow</i>	1	<i>Montrose</i>
<i>St. Andrews</i>	1	<i>Couper</i>



<i>Anstruther-Easter</i>	I		<i>Forfar</i>	I
<i>Dumfermline</i>	I		<i>Rothsay</i>	I
<i>Inverness</i>	I		<i>Nairn</i>	I
<i>Burntisland</i>	I		<i>Forres</i>	I
<i>Innerkeithing</i>	I	45	<i>Rutherglen</i>	I
<i>Kinghorn</i>	I		<i>North-Berwick</i>	I
<i>Brichen</i>	I		<i>Anstruther-wester</i>	I
<i>Irvine</i>	I		<i>Cullen</i>	I
<i>Jedburgh</i>	I		<i>Lauder</i>	I
<i>Kirkcudbright</i>	I	50	<i>Kintore</i>	I
<i>Wigtoun</i>	I		<i>Annandale</i>	I
<i>Dumfries</i>	I		<i>Lochmaben</i>	I
<i>Pittenweem</i>	I		<i>Sanquhar</i>	I
<i>Selkirk</i>	I		<i>New-Galloway</i>	I
<i>Dumbartoun</i>	I	55	<i>Kilrenny</i>	I
<i>Renfrew</i>	I		<i>Fortrose</i>	I
<i>Dumbar</i>	I		<i>Dingwall</i>	I
<i>Lanerk</i>	I		<i>Dornock</i>	I
<i>Aberbrothock</i>	I		<i>Queensferry</i>	I
<i>Elgin</i>	I	60	<i>Inveraray</i>	I
<i>Peebles</i>	I		<i>Inverury</i>	I
<i>Crayl</i>	I		<i>Wick</i>	I
<i>Tain</i>	I		<i>Kirkwall</i>	I
<i>Culross</i>	I		<i>Inverbervey</i>	I
<i>Bamff</i>	I	65	<i>Stranraer</i>	I
<i>Whithorn</i>	I		<i>Campbeltoun</i>	I

By the foresaid *Act 8. Parl. Anno 1707.* It  
 provided, That of the Forty Five Repre-  
 sentatives of *Scotland*, in the House of Com-  
 mons, of the Parliament of *Great-Britain*,  
 Fifteen



Fifteen should be chosen by the Royal Burrows as follows, viz.

That the Town of *Edinburgh* should have Right to elect and send one Member to the Parliament of *Great-Britain*. And,

That each of the other Burghs should elect a Commissioner in the same Manner, as they were in Use to elect Commissioners to the Parliament of *Scotland*; Which Commissioners and Burghs, being divided into Fourteen Classes or Districts, should meet at such Time, and in such Burghs within their respective Districts as Her Majesty, Her Heirs or Successors should appoint, and should elect one for each District, which are as follows; here placed according to their Rank in the Rolls of Parliament.

### The First District.

- I. *Tain, Dingwall, Dornock, Wick, Kirkwall*
- II. *Inverness, Nairn, Forres, Fortrose.*
- III. *Elgin, Bamff, Cullen, Kintore, Inverurie*
- IV. *Aberdeen, Montrose, Brichen, Aberbrothock, Inverbervy.*
- V. *Perth, Dundee, St. Andrew's, Couper, Forfar.*
- VI. *Anstruther-Easter, Pittenweem, Crail, Anstruther-Wester, Kileny.*
- VII. *Dysart, Kirkcaldy, Burntisland, Kinross.*



VIII. *Stirling, Innerkeithing, Dumfermling, Cross, Queensferry.*

IX. *Glasgow, Dumbarton, Renfrew, Rutherglen.*

X. *Haddingtoun, Jedburgh, Dumbar, Northwick, Lauder.*

XI. *Linlithgow, Selkirk, Lanerk, Peebles.*

XII. *Dumfries, Kirkcudbright, Annan, Lochmaben, Sanquhar.*

XIII. *Wigtoun, Whitehorn, New-Galloway, Stranraer.*

XIV. *Air, Irvine, Rothsay, Inverary, Campbeltown.*

And by the same Act it is ordained, That where the Votes of the Commissioners of the said Burghs, met to choose their Representatives for their several Districts to the Parliament of *Great Britain*, shall be equal : In that case, the President of the Meeting shall have casting or decisive Vote, by and attour his vote as a Commissioner for the Burgh from which he is sent.

The Commissioner from the eldest Burgh presides in the first Meeting ; and the Commissioners from the other Burghs in their respective Districts, are to preside afterwards by turns, in the Order as the said Burghs were listed in the Rolls of the Parliament of *Scotland*.

In Case any of the said Fifteen Commissioners from Burghs, shall, during the Currency



cy of a Parliament, decease, or become legally incapable to sit in the House of Commons, then the Town of *Edinburgh*, or the District which choosed the said Member, shall elect another in his Place, to serve, during the Continuance of that Parliament.

But there being a Faculty given by the 22d Article of the Treaty of Union, and the Act of the Parliament of *Scotland*, and referred to the Parliament of *Great Britain*, make further Provision therein: Therefore, the first Parliament of *Great-Britain*, by the said Act, for rendering the Union of the Kingdoms more entire and compleat, has enacted, That for Election of the Fifteen Representatives of the Royal Burrows, the Sheriff of the Shire of *Edinburgh*, shall, on Receipt of the Writ, direct his Precept to the Lord Provost of *Edinburgh*, to cause a Burgh to be elected; and on Receipt thereof, the City shall elect, and their common Clerk shall certify his Name to the said Sheriff, who shall annex it to his Writ, and return it to the Court from whence it issued. And as to the Royal Burghs divided into Fourteen Classes, the several Sheriffs or Stewards, shall, on Receipt of their several Writs, direct a Precept to every Royal Burgh within their respective Jurisdictions, reciting the Contents and Direction of the Writ, commanding them to elect a Commissioner, as they formerly used, to the

Parliament



Parliament of *Scotland*; and to order the Commissioners to meet at the presiding Burgh, upon the 30th Day after the Test of the Writ, unless on the *Lord's Day*, and then the Day after, and choose their Burgeſſes and the common Clerk of the presiding Burgh, shall, immediately after Election, return the Name of the elected, to the respective Sheriff or Stewart, who shall annex and return as aforesaid.

And in case a Vacancy should happen in time of Parliament, by Decease or Incapacity, a new Member shall be elected, conform to the Method before appointed herein. And in case such Vacancy be of a Representative of any one of the said Fourteen Classes, that Burgh which presided at the Election of the deceased or disabled Member, shall preside at the new Election.

And in case that on the Issuing of the Writs of Summons for electing, any Shire or Burgh hath not at the Time, a Turn to elect; then it shall be omitted out of the Writ directed to such a Sheriff or Stewart.

To maintain and preserve the Distinction of the Estates of Parliament, and to avoid their Confusion, as is directed by *Act 33. Parl. 11. James VI. 1587.* it may be thought, that a Freeholder not being an actual Trading Merchant, cannot be chosen a Member of Parliament to represent a Burgh. And Sir George Mackenzie of Rosehaugh, Advocate to King Charles



*Charles II.* in his *Observations* upon that *Act* says, It was made to keep Barons, who could not get themselves chosen to represent the Shires, from being elected Burgeses of Parliament, though they were Provolls or Magistrates, as they then ordinarily were: And by that same *Act* it may be thought, that a Burges, who is ordinarily so designed, should be debarred from being chosen a Baron or Knight of a Shire. However, this *Act* was long in desuetude, till by *Acts* of Burrows, all Burgeses are discharged from electing Gentlemen to represent them in the Parliament under the pains specified in these *Acts*: For they found Gentlemen did not adhere to the true Interest of Burghs, which they did not understand; and it might be suspected, that none desired to be so elected, but such as had private Designs; albeit on the other Hand, they might be thought a proper Way for Burgeses to have their Interests maintained by Lawyers or able Statesmen, whom they may chuse.

Further, by an *Act 3. Parl. Ch. II.* it is determined, That only actual Trading Merchants can represent Burghs-royal in Parliament; which *Act*, was founded upon an express Decision of the Session.

But none of these Laws made for precluding Gentlemen nor Merchants to be chosen to represent Burghs-royal in Parliament have taken Effect; for in Imitation of the *English* Parliament



And did choofe Lawyers and Learned Gentle-  
 men to represent Burghs in Parliaments before  
 the Union, and continue ftill fo to do. How-  
 ever, thefe ancient Laws are fo far regarded,  
 that the Commiffioner fent to elect, is a Bur-  
 ghefs of the Burgh from whom he is fent, and  
 the Member elected is a Burgefs of one or  
 more of the Burghs within the Diftrict, which  
 is chofen to represent. And this we may  
 regard as the fundamental Qualification of a Citizen  
 Burgefs to be elected Member of Parlia-  
 ment, and is in place of a Freehold, with Re-  
 fpect to Commiffioners from Shires. But be-  
 fore, his being a Burgefs, he muft have all  
 the other Qualifications by Law required in  
 Electors of Commiffioners of Shires, and  
 the Perfon elected, to represent a Shire men-  
 tioned in the former Section, to which I refer.  
 Upon the Receipt of the Sheriff's Writ, fent  
 above directed, the Magiftrates and com-  
 miffioners of the Town-Clerk of the refpective Burghs by  
 the Community is represented, meet  
 in their Council-Houfe; and the Sheriff's Pre-  
 cept being read, they either proceed immedi-  
 ately to the Election of a Commiffioner, or  
 appoint another Diet for that purpofe; and  
 when that comes, they nominate their Com-  
 miffioner, giving him a Commiffion and power  
 to meet upon the Day appointed by the Sher-  
 iff's Writ at the prefiding Burgh, with the  
 Commiffioners of the other Burghs within  
 that



that District, to chuse and elect a Representative from the several Burghs of their District, to sit and vote in the House of Commons of the ensuing or current Parliament of Great-Britain.

And on the 30th Day after the Tests Writ or Summons of Parliament, the several Commissioners meet and chuse their Members of Parliament accordingly, upon which the common Clerk of the presiding Burgh, returns the Name of the Person elected to their respective Sheriff or Stewart who directed his Burgh the Precept for Choosing.

*An Alphabetick TABLE of the Royal Burghs in Scotland, which send Representatives and Members to the Parliament of Great-Britain Shewing,*

The Rank in the Roll of Parliament of Scotland.	The District the Burgh belongs to.	The Shire which it lies in.
<b>A</b>		
<b>A</b> Berbrothock 33	iv	Forfar
Aberdeen 4	iv	Aberdeen
Air 9	xiv	Air
St. Andrews 7	v	Fife
Annan 51	xii	Dumfries
Anstruther-Easter 15	vi	Fife

Anstruther-Easter



Strutber- Wester	47	vi	Fife
<b>B</b>			
amff	39	iii	Bamff
ichen	21	iv	Forfar
ntisland	18	vii	Fife
<b>C</b>			
ppletoun	66	xiv	Argyle
par	14	v	Fife
yl	36	vi	Fife
en	48	iii	Bamff
ofs	38	viii	Perth
<b>D</b>			
gwell	57	i	Ros
ock	58	i	Sutherland
abar	31	x	Haddingtoun
bartoun	29	ix	Dunbartoun
fermling	26	viii	Fife
freis	16	xii	Dumfreis
dee	3	v	Forfar
rt	11	vii	Fife
<b>E</b>			
burgh	1		Edinburgh
	34	iii	Elgin
<b>F</b>			
	31	v	Forfar
	44	ii	Elgin
Anstruth	56	ii	Ros
<b>F</b>		<b>G</b>	



<b>G</b>			
<i>Glasgow</i>	8	ix	<i>Lanerk</i>
<b>H</b>			
<i>Haddingtoun</i>	10	x	<i>Haddingtoun</i>
<b>I</b>			
<i>Fedburgh</i>	23	x	<i>Roxburgh</i>
<i>Innerkeithing</i>	19	viii	<i>Fife</i>
<i>Inverary</i>	60	xiv	<i>Argyle</i>
<i>Inverbervey</i>	64	iv	<i>Kincardine</i>
<i>Inverness</i>	17	ii	<i>Inverness</i>
<i>Inverury</i>	61	iii	<i>Aberdeen</i>
<i>Irvine</i>	22	xiv	<i>Air</i>
<b>K</b>			
<i>Kilrenny</i>	55	vi	<i>Fife</i>
<i>Kinghorn</i>	20	vii	<i>Fife</i>
<i>Kintore</i>	50	iii	<i>Aberdeen</i>
<i>Kirkcaldy</i>	12	vii	<i>Fife</i>
<i>Kircudbright</i>	24	xii	<i>Kircudbright</i>
<i>Kirkwall</i>	63	i	<i>Orkney</i>
<b>L</b>			
<i>Lauder</i>	31	x	<i>Berwick</i>
<i>Lanerk</i>	32	xi	<i>Lanerk</i>
<i>Linlithgow</i>	6	xi	<i>Linlithgow</i>
<i>Lochmaben</i>	51	xii	<i>Dumfries</i>
<b>M</b>			
<i>Montrose</i>	13	iv	<i>Forfar</i>



N				
airn	43	ii	Nairn	
ew-Galloway	54	xiii	Wigton	
orth-Berwick	46	x	Haddington	
P				
bles	35	xi	Peebles	
th	2	v	Perth	
entworth	27	vi	Pife	
Q				
ensiferry	39	viii	Leithgow	
R				
freu	30	ix	Renfrew	
sfay	42	xiv	Bute	
berglen	45	ix	Lanerk	
S				
quhar	53	xii	Dumfries	
rk	28	xi	Selkirk	
ling	5	xiii	Stirling	
mraver	65	xiii	Wigton	
T				
n	37	i	Raf	
W				
born	62	i	Cathness	
orn	60	xiii	Wigton	
orn	25	xiii	Wigton	





## T I T L E V.

*Of the Duty of the Sheriffs and Stewards  
Majors or Provosts, and Baillies  
Clerks, and of other Officers concerned  
the returning the Writ of Summons  
Parliament, with the Names of the  
representatives elected.*

**T**HE Duty of a Sheriff or Stewart  
1<sup>st</sup>, In giving Order for the Election  
of a Representative for the Shire or Stewartry  
over which he is Sheriff or Stewart. 2<sup>dly</sup>,  
directing his Precepts to the Magistrates  
the Cities or Burghs within his County,  
choosing Citizens or Burgeses to come to Par-  
liaments. And 3<sup>dly</sup>, In making true  
lawful Returns of the Writs of Parliamen-  
t with the Indentures and Names of the Knights  
and Citizens elected, to the Court out of  
which these Writs are issu'd.

It is by *Stat. 6. Anne 6.* in the Year 1700  
enacted, That the Sheriffs and Stewards  
the respective Shires and Stewartries in  
*land*, to whom the Writs under the Great



al of *Great-Britain*, for electing and chusing  
 45 Representatives of *Scotland* are direct-  
 shall, on Receipt of such Writs, forth-  
 with give Notice of the Time of Election for  
 Knights or Commissioners for their respective  
 Shires or Stewartries; which Intimation is  
 to be made according to the Order prescrib-  
 ed by the Act of Parliament 1681, (of which  
 see more) and three Days at least before the  
 day appointed for the Meeting of the Elec-

6. The Clerks chosen by the Freeholders,  
 meeting in Obedience to the Sheriff's Order  
 and Precept for chusing their Commissioners,  
 (as is elsewhere declared) are by the same  
 6. *Anne* 6. ordained to return the Names  
 of the Persons elected at such Meeting, to  
 the Sheriff or Stewart of the Shire or Stew-  
 artry.

The Sheriff again, by the same Act, is  
 ordained to annex the Return of the Com-  
 missioner's Name to the Writ under the  
 Great Seal directed to him, and to return it  
 in the same, unto the Court out of which  
 the Writ of Summons to the Parliament is  
 issued.

by *Stat. 7. Hen. IV. 15.* it is ordained,  
 that after Election, the Names of the Per-  
 sons so chosen, shall be written in an Inden-  
 tured, sealed and tacked, as is directed by that  
 Act of which before.



The Stat. 23, Hen. VI. 15. in the Year 1445 ordains, That every Sheriff who maketh not due Election of Knights to come to Parliament, in convenient Time, without Collusion and that maketh not good and true Return of such Elections, shall forfeit to the King 100 lib. and also shall incur the pain of 100 lib. to be paid to him that will sue for the same against him, his Executors or Administrators for this Cause, by way of Action of Debt with his Costs in this Behalf expended, without waging of Law of his Demand, or having *Essoin* (a.)

By Stat. 10. and 11. W. III. 7. in the Year 1700, it is enacted, That the Sheriff or other Officer having the Execution and Return of any Writ of Parliament, shall, on or before the Day that any Parliament shall be called to meet, and with all convenient Expedition not exceeding Fourteen Days after any Election made by virtue of any new Writ, either Person, or by his Deputy, make Returns

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(a) *Essoin*.] *Essoin* cometh from the French *Essoin* *Exonni* (i. e.) *causarius miles*; he that hath his Personence forborn or excused upon any just Cause, Sicknefs, &c. It signifies in the common Law of England, The Allegation of a just Cause of Absence and an Excuse for him that is summoned to appear in a Court, and answer to any Action or Claim against him. It is the same with *Excusatio* in the civil Law.



the same to the Clerk of the Crown in the High Court of *Chancery*, to be by him sealed, &c. and shall pay to the Clerk of the Crown 10 sh. for every Knight of the Shire, and 2 sh. for every Citizen, Burgess, &c. which the Sheriff, &c. shall charge to the King, and have allowed him upon his Account.

Every Sheriff, or other Officer or Officers forefaid, who shall not make the Returns according to the true Intent and Meaning of this Act, shall forfeit for every such Offence the sum of 500 lib. one Moiety whereof shall be to His Majesty, and the other to him or them that will sue for the same, to be recovered by Action of Debit, Plaint or Information, in any of His Majesty's Courts of Record at *Westminster*, wherein no *Essoin*, *Protection* or *Wager of Law* (b) shall be allowed, nor more than one *Impar lance* (c).

F 4

By

(b) *Wager of Law*.] *Wage variare*, from the French *Gager pignus*, signifies the giving Security for the Performance of any Thing; and *variare legem* is to put Security, that he will make Law at the Day assigned; and to make Law, is to take an Oath that he hath not the Debt challenged at his Hand, and to bring with him so many Men as the Court shall assign, to avow upon their Oath, that in their Consciences he has sworn truly. These that come to charge the Defendants, are by the *Civilians* called *argatores*, and, by the *Feudes*, *Sacramentales*, as in the *English Law*.

(c) *Impar lance*.] *Interlocutio*, or *Interloquelo*, is a Motion made in Court, whereby the Defendant craves a Retraite, or any other Day to put in his Answer.



By *Stat. 7. and 8. W. III. 7.* continued by *Stat. 12 and 13. W. III. 5.* it is enacted That all false Returns wilfully made of any Knight of the Shire, Citizen, Burgeſſs, Baron of the Cinque-ports, or other Members to ſerve in Parliament, are againſt Law, and are thereby prohibited; and in caſe that any Perſon or Perſons ſhall return any Member to ſerve in Parliament for any County, City, Borough, Cinque-port or Place, contrary to the laſt Determination in the Houſe of Commons, of the Right of Election, in ſuch County, City, Cinque-port or Place, That ſuch Return ſo made, ſhall be void and is adjudg'd to be a falſe Return.

The Party ſo grieved, to wit, every Perſon that ſhall be duly elected to ſerve in Parliament for any County, City, Borough, Cinque-port or Place, by ſuch falſe Return, may ſue the Officers and Perſons making or procuring the ſame, and every or any of them, at his Election, in any of His Maſteſty's Courts of Record at Weſtminſter, and ſhall recover double the Damages he ſhall ſuſtain, by reaſon thereof, together with his full Coſts of ſuch Suit.

Any Officer that ſhall falſly and maliciously return more Perſons than are required to be choſen by the Writ or Precept on which a Choice is made, the like Remedy may be had againſt him or them, and the Party or Parties that willingly procure the ſame, and every one of them, by the Party grieved at his Election.



All Contracts, Promises, Bonds and Securities, whatsoever, made or given to procure the Return of any Member to serve in Parliament, or any Thing relating thereunto, are held to be adjudged void; and whoever makes or gives such Contract, Security, Promise or Bond, or any Gift or Reward to procure such false or double Return, forfeits the Sum of 300 lib. one Third part thereof to be paid to His Majesty, another Third part thereof to the poor of the County, City, Borough, or Port concerned, and one Third part thereof to the Informer, with his Costs to be recovered in any of His Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint or Information, wherein no *Essoin*, *Protection* or *Wager of Law*, shall be allowed, nor more than one *Impar lance*.

Every Information or Action brought upon this Stat. 12. and 13. W. III. 5. must be brought within the Space of Two Years after the Cause of Action shall arise, and not after.

By Stat. 33. Hen. VI. 15. in the Year 1455, it is ordained, That every Sheriff, after the Delivery of any Writ of Election to him made, shall make and deliver, without Fraud, a sufficient Precept under his Seal, to every Mayor, Bailiff, or to Bailiffs or Bailiff, where no Mayor is, of the Cities and Burghs within his County, reciting the said Writ, commanding them



them by his Precept ; if it be a City, to chuse by the Citizens of the same City, *Citizens*, and in the same Manner and Form, if it be a Borough by the Burgeses of the same, to come to the Parliament.

And by *Stat. 7. and 8. W. III. 25.* when the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, for the Time being, shall issue out Writs for summoning Members to attend in Parliament, the several Writs shall be delivered to the proper Officer, to whom the proper Execution thereof doth properly appertain, and to no other Person whatsoever : And every such Officer, upon Receipt of the same Writ, shall, upon the Back thereof, indorse the Day he received the same, and shall forthwith, upon Receipt of the Writ, make out the Precept or Precepts to each Borough, Town corporate, Port or Place within his Jurisdiction, where any Member or Members are to be elected to serve in a New Parliament, or to supply any new Vacancy in Parliament, and within *Three Days* after the Receipt of the said Writ of Election, shall, by himself, or proper Agent, deliver, or cause to be delivered, such Precept or Precepts to the proper Officer of any such Borough, Town corporate, Port or Place within his Jurisdiction to whom the Execution of such Precept doth belong or appertain, and to no other Person whatsoever.



And when the Mayor or Bailiffs return the  
 Receipt to the same Sheriff by Indentures, every  
 Sheriff thereupon must make a good and  
 faithful Return of every such Writ, and of every  
 Return by the Mayors, or Bailiff or Bailiffs,  
 where no Mayor is, to him made.

And every Sheriff, at every Time he doth  
 contrary to this Statute, or any other Statutes  
 touching the Election of Knights, Citizens and Bur-  
 gesses to come to Parliament, before this time  
 made, shall incur the Pain contained in the  
 Statute made in the 8th Year of *Henry VI.*  
 And moreover, shall forfeit and pay to every  
 Person hereafter chosen, Knight, Citizen or  
 Burges in his County, to come to any Par-  
 liament, and not duly returned, or to any o-  
 ther Person, which, in default of such Knight,  
 Citizen or Burges, will sue, 100 lib. whereof  
 every Knight, Citizen and Burges so grieved,  
 generally, or any other Person, which, in their  
 default, will sue, shall have his Action of Debt  
 against the saids Sheriffs, or his Executors or  
 Administrators, to demand and have the said  
 100 lib. with his Costs spent in that Case; and  
 that in such Action, taken by virtue of this  
 Statute, the Defendant shall not wage his Law  
 to the Demand foresaid in any ways; and that  
 the Defendant in such Action shall have any  
 other thing.

When the Sheriff maketh not Election in a  
 County-Court, and a good Return accor-  
 dingly,



dingly, he forfeits 100 lib. to the King, and shall i  
100 lib. more to him that will sue, to be re to the  
covered by Action of Debt, with Costs, shall lo  
manner fully mentioned in *Statute* 23. Hen VI. 4.  
VI. 15. by which Law it is also provided *traver*  
That every Knight, Citizen or Burgeſs, t ſtice  
come to any Parliament to be holden, in du heriff  
Form choſen, and not returned, as aforeſaid t his  
is to begin his Action of Debt as before, withi til t  
*Three Months* after the ſame Parliament com and w  
menced, to proceed in the ſame Suit effectually ſs are  
without Fraud; and if he do it not ſo, and e cho  
ther that will ſue, ſhall have the ſame Actio pend  
of Debt, as it is before ſaid, and ſhall recover ereby  
the ſame, with his Coſts ſpent in this Behal night  
in Manner and Form aforeſaid; ſo that n ordina  
Defendent in ſuch Action ſhall wage his Law ſſions  
nor be *effoined* in any ways, as afore is ſaid d if b  
and that ſuch Perſons ſhall be, in the Action e Justi  
foreſaid, as in a Writ of Treſpaſs, done again tted,  
the Peace of the Common Law. oc pa

Not only the King's Courts of Records at *Westminster*, may judge Actions against Sheriffs and others concerned in making undue Returns, but also by *Statute 11. Henry IV. 1.* is ordained, That the Justices assigned to take Assizes, shall have Power to enquire at the Sessions of Assizes, of such Returns made; and if it be found by Inquest, and due Examination before the same Justices, that any Sheriff hath made a Return, contrary to the Statutes, he

that Latin,



shall incur the Penalty of 100 lib. to be paid to the King, and the Knights unduly return'd shall lose their Wages. And by *Statute 6. Hen. VI. 4.* All Sheriffs shall have their Answer and *Traverses (d)* to Inquests and Offices, before any Justices of Assize to be taken; and the said Sheriffs shall not be endamaged into the King or his Successors, for any such Inquest taken, until they be duly convicted in Form of Law. And whereas by *Statute Henry VI. 7.* the Sheriffs are to return such Knights of the Shire, as are chosen by the Majority of those that can pay Forty *Shill.* by Year, and above: It is hereby enacted, That if any Sheriffs return Knights to the Parliament, contrary to that Ordinance, the Justices of Assizes in their Sessions shall have power thereof to enquire; and if by Inquest the same be found before the Justices, and the Sheriff thereof be duly attainted, he shall incur the Penalty of 100 lib. to be paid to the King; and also that he have imprisonment *by a Year*, without being let to *Main-prize (e)* or Bail; and the Knights unduly return'd shall lose their Wages.

Never-

*(d) Traverse.]* From the *French, Traverser, i. e. Trans-*verse, signifies sometimes to deny, sometimes to over-throw a Plaintiff's Bill, much used in Answers to Bills in Chancery, and signifieth, that which the Defendant pleadeth, to avoid the Claim against him.

*(e) Main-prize.]* A Compound *French* Word, from *Latin, Manu capio*, signifies in the *English Law*, the



Nevertheless, the Sheriff nor his Under Sheriffs in any County or City, nor the Mayor, Bailliff, Constable, *Portgreve* (f) or other Officer or Officers of any Burgh, Town corporate, Port or Place to whom the Execution of any Writ or Precept, for electing Members to serve in Parliament, doth belong appertain, shall give, pay, receive or take any free Reward or Gratuity whatsoever for the making out Receipt, Delivery, Return or Execution of any such Writ or Precept.

The Duty of the Magistrates of Cities, Burghs, is to give due Obedience to the Sheriffs Precepts, issued out for choosing Citizen or Burgesses to come to Parliament and by making in due Time, by themselves or their Clerk, to the Sheriff of the County

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the taking and receiving a Man into friendly Custody, who otherways is and might be committed to Prison, upon Security given of his future coming at a Day assigned, and they that thus undertake for any, are called *main Peruors*; because they do receive him into their Hands, from whence comes the Word, *Mainpernable*, which denotes that may thus be baill'd; for, in many Cases, a Man is not *mainpernable*.

(f) *Portgreve*.] *Portgrevinus*, a Saxon Word, *vel portus praefectus*, signifies a Magistrate in certain Sea-Coast-Towns. *Cambden* says, *The chief Magistrate of London (now Lord Mayor) was so called.*



proper Return of his Precept, with the  
 name of the Citizen or Burgeſſ elected.

By *Stat. 7 and 8. W. III. 25.* the proper  
 ſicet of every Burgh or Town corporate,  
 whom the Execution of the Sheriff or o-  
 r Officer, his Precept for chuſing Citi-  
 ſ or Burgeſſes to ſerve in Parliament, is  
 ected, ſo ſoon as he receives the Precept,  
 ll, upon the Back thereof, indorſe the Day  
 his Receipt thereof, in the Preſence of  
 Party from whom he received ſuch Pre-  
 t and ſhall forthwith cauſe Notice to be  
 en of the Time and Place of Election,  
 ſhall proceed to Election thereupon, with-  
 he Space of eight Days next after the  
 e of this Receipt of the ſaid Precept,  
 give four Days Notice, at leaſt of the  
 appointed for the Election; but *Stat.*  
*Georg. &c.* three Days at leaſt.

and By *Stat. 23. Henry VI. 15.* it is e-  
 ed, That the Mayor or Bailiffs make E-  
 on for a Citizen or Burgeſſ, and return  
 fully the Precept to the ſame Sheriff, by  
 ſures betwixt him and them, to be made  
 he ſaid Elections; and of the Names of  
 ſaid Citizens and Burgeſſes, by them ſo  
 en: And at every Time that any May-  
 and Bailiff, or Bailiffs or Bailiff, where no  
 or is, ſhall return others than thoſe cho-  
 by the Citizens or Burgeſſes of the Ci-  
 or Burrows where ſuch Election be, or  
 ſhall



shall be made, shall incur and forfeit to the King 40 *lib.* And moreover, shall forfeit for default, and pay to every Person chosen a Citizen or Burgeses to come to Parliament, and not by the same Mayor and Bailliff, or Bailliffs or Bailliff, where no Mayor is, returned, or any other Person, which in Default of such Citizen or Burgeses so chosen, who shall sue 40 *l.* whereof every one of the Citizens and Burgeses so grieved, severally, or any other Person which in their Default who shall sue, shall have his Action of Debt against every one of the said Mayors and Bailliffs, Bailliffs or Bailliff, where no Mayor is, against their Executors and Administrators to demand and have of every of the said Mayors and Bailliffs, or Bailliffs or Bailliff, where no Mayor is, 40 *lib.* with his Costs in this Case expended.

And that in such Action of Debt, taken by Force of this Statute, no Defendant shall in any ways shall wage his Law of the said Demand, nor have an *Essoin*.

The Laws above-cited, prohibiting and punishing false or wrongous, and double returns, relate to Mayors, Provosts and Bailliffs of Cities and Burghs, as well as to Sheriffs.

As to the Royal Burrows of Scotland, it is by Statute 6. An. 6. enacted, That the Sheriff of the Shire of Edinburgh, shall, next



the Receipt of the said Writ of Summons  
Parliament, directed to him, forthwith  
direct his Precept to the Lord Provost of  
*Edinburgh*, to cause a Burgess to be elected  
that City.

After the Election of the Member of Par-  
liament, chosen by the Magistrates and  
Town-Council of *Edinburgh*, the common  
Clerk of the City shall certify the Name of  
the Member elected, to the Sheriff of *Edin-  
burgh*, who shall annex it to his Writ, and  
return it with the same, into the Court from  
which the Writ issued.

As to the other Royal Burghs divided in-  
to 14 Classes or Districts, the Sheriffs or  
Stewards of the several Shires and Stewart-  
Baillies, shall, on the Receipt of their several  
Precepts, direct their several Precepts to every  
Burgh within their respective Shires or Stew-  
aries; reciting therein the Contents of the  
Writ, and the Date thereof: And command-  
ing them forthwith to elect each of them  
a Commissioner, as they used formerly to  
elect Commissioners to the Parliament of  
*Scotland*; and to order the said respective  
Commissioners to meet at the presiding Burgh  
of their respective District, (naming the said  
presiding) upon the 30th Day after the Day  
of the Test of the Writ, unless it be on the  
Lord's Day, commonly called *Sunday*, and then  
the next Day after; and then to chuse their



Burgess for the Parliament: And the common Clerk of the then presiding Burgh, shall immediately after the Election, return the Name of the Person so elected, to the Sheriff or Stewart of the Shire or Stewart wherein such presiding Burgh is, who shall annex it to his Writ, and return it with the same, into the Court from whence the Writ issued. And in case a Vacancy shall happen in Time of Parliament, by the Decease or legal Incapacity of any Member, a new Member shall be elected in his Room, conformable to the Method herein, before appointed, and in case such Vacancy be of a Representative for any one of the said 14 Counties or Districts of the said Royal Burgh, that Burgh which presided at the Election of the deceased or disabled Member shall be the presiding Burgh at such next Election.

The Duty of the Clerk of the Crown with Respect to Returns, is defined by Statute 7 and 8. *William III.* 7. which ordains him to enter in a Book kept for the said Purpose, every single and double Return of any Member or Members to serve in Parliament, which shall come into his Office or into his Hands, and also every Alteration and Amendment as shall be made in every such Return; to which Book, all Persons shall have free Access to search



ke Copies for reasonable Fees; and the Party prosecuting such Suit, may, at any time, give in Evidence, such Book, or a true Copy thereof, relating to such false or double return, and shall have like Advantage there-  
 as if he produced that Record him-  
 self; and if the Clerk of the Crown will-  
 fully omit to perform his Duty in the Pre-  
 mises, he shall for every such Offence, for-  
 feited to the Party grieved, 500 l. to be re-  
 covered in any Court of Record at *Westmin-*  
*ster*, by Action, Bill, &c. wherein no *Essoin*  
 shall be allowed, nor more than one Im-  
 purance.

All Actions hereupon, are to be brought  
 within two Years after Cause, and not af-

That one may know the several Burghs  
 which each respective Sheriff or Stewart  
 to direct his Precepts, I have thought fit  
 to insert the following Table.





*An Alphabetick Table of all the Shires  
Counties in Scotland, shewing,*

Rank in the Roll of Parlia- ment.	Name of the Shire.	Name of the Town in that Shire,
	<b>A</b>	
xxviii.	<i>Aberdeen</i>	{ <i>Aberdeen</i> <i>Inverury</i> <i>Kintore</i>
ix.	<i>Air</i>	{ <i>Air</i> <i>Irvine</i>
xxii.	<i>Argyle</i>	{ <i>Campbletoun</i> <i>Inverary</i>
	<b>B</b>	
xxvi.	<i>Bamff</i>	{ <i>Bamff</i> <i>Cullen</i>
iii.	<i>Berwick</i>	<i>Lauder</i>
xii.	<i>Bute</i>	<i>Rothsay</i>
	<b>C</b>	
xxix.	<i>Caithness</i>	<i>Wick</i>
xxxii.	<i>Clackmannan</i>	
	<b>D</b>	
xi.	<i>Dumbartoun</i>	<i>Dumbartoun</i>
vii.	<i>Dumfries</i>	{ <i>Annan</i> <i>Dumfries</i> <i>Lochmaben</i> <i>Sanquhar</i>

Rank in  
the Roll  
of Parlia-  
ment.

i.

xxx.

xxi.

xxv.

ii.

R



Rank in  
the Roll  
of Parlia-  
ment.

Name of the  
Shire.

Name of the Burghs  
in the Shire.

E

i.

*Edinburgh*

*Edinburgh*

xxx.

*Elgin*

{ *Elgin*  
*Forres*

F.

xxi.

*Fife*

{ *St. Andrew's*  
*Anstruther-Eas.*  
*Anstruther-Wej.*  
*Burntisland*  
*Couper*  
*Crayl*  
*Dumfermling*  
*Dysert*  
*Innerkeithing*  
*Kilrenny*  
*Kinghorn*  
*Kirkcaldy*  
*Pittenweem*  
*Aberbrothock*  
*Breichen*  
*Dundee*  
*Forfar*  
*Montrose*

xxv.

*Forfar*

H.

ii.

*Haddingtoun*

{ *Dumbar*  
*Haddingtoun*  
*Northberwick*

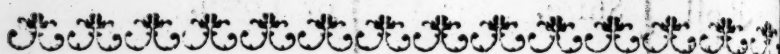


Rank in the Roll of Parlia- ment.	Name of the Shire.	Name of the Town or Burgh.
	I	
xix.	<i>Inverness</i>	<i>Inverness</i>
	K.	
xvii.	<i>Kincardine</i>	<i>Inverbervey</i>
xxiv.	<i>Kinross</i>	
xxvii.	<i>Kirkcudbright</i>	<i>Kirkcudbright.</i>
	L.	
vii.	<i>Lanerk</i>	{ <i>Glasgow</i> <i>Lanerk</i> <i>Rutherglen</i>
xv.	<i>Linlithgow</i>	{ <i>Linlithgow</i> <i>Queensferry</i>
	N.	
xx.	<i>Nairn.</i>	<i>Nairn</i>
	O	
xxx.	<i>Orkney and Zet- land.</i>	<i>Kirkwall</i>
	P.	
vi.	<i>Peebles</i>	<i>Peebles</i>
xvi.	<i>Perth</i>	{ <i>Culross</i> <i>Perth</i>



Rank in the Roll of Parlia- ment of Scotland.	Name of the Shire.	Name of the Burgh or Town.
	R.	
xiii.	<i>Renfrew</i>	<i>Renfrew.</i>
xxxiii.	<i>Ross</i>	{ <i>Dingwall</i> <i>Fortrose</i> <i>Tain.</i>
iv.	<i>Roxburgh</i>	<i>Jedburgh</i>
	S.	
v.	<i>Selkirk</i>	<i>Selkirk.</i>
xxviii.	<i>Sutherland</i>	<i>Dornock.</i>
xiv.	<i>Stirling</i> W.	<i>Stirling</i>
ix.	<i>Wigtoun</i>	{ <i>Newgalloway</i> <i>Stranrauer</i> <i>Whithorn</i> <i>Wigtoun</i>
	Z.	
xxxi.	<i>Zetland and</i> <i>Orkney</i>	<i>Kirkwall.</i>





## T I T L E VI.

*Of the Duty of the Person elected, and of what he is to do before he can warantably sit and vote in either of the Houses of Parliament.*

**T**HE Person elected to be a Member of the House of Commons, after the Election, is, by *Stat. 4. and 5. Ann. 8.* prohibited to accept of any Office or Profit from the Crown, during such Time as he shall continue a Member; otherwise his Election shall be, and by that Act is declared to be void, and a new Writ shall issue for a new Election, as if such Person, so accepting, was naturally dead.

Nevertheless, such Person shall be capable of being again elected, as if his Place had not thus become void.

If Members by Law incapacitate, disabled and declared incapable to sit in Parliament, shall be returned; their Election is not only void, but if they presume to sit and vote in the House of Commons, they shall forfeit 500 *lib.* in Manner mentioned in the forfeited Statute 4th and 5th, *Ann. 8.* and as is declared



the preceeding Title, which shews the Qualification of the Person eligible.

It is by *Stat. 5. Eliz. 1.* in the Year 1563. enacted, That every Person who hereafter shall be elected or appointed a Knight, Citizen or Burgess, for any Parliament to be holden, shall, before he enter into the Parliament-House, or have any Voice there, open, receive and pronounce the Oath of Supremacy; and that he who shall enter into the Parliament-House, without taking the said Oath, shall be deemed no Knight, Citizen, Burgess nor Baron for that Parliament, nor shall have any Voice; but shall be to all Intents, Constructions and Purposes, as if he had never been returned nor elected Knight, Citizen, Burgess or Baron for that Parliament, and shall suffer such Pains and Penalties, as if he had presumed to sit in the House, without Election, Return or Authority.

And the *Stat. 7. James I.* in the Year 1608. enacteth, That all and every the Knights, Citizens, Burgesses and Barons of the five Parts of the Commons House of Parliament, at any Parliament or Session of Parliament, to be assembled, before he, or they, shall be permitted to enter into the said House, shall make, take, and receive the Oath of Allegiance, mentioned in the Statute of 3.

*Ja.*



*Ja. I. ch. 4. in the Year 1606. common*  
called, *The Oath of Allegiance.*

As also, it is by 30. *Ch. II. 1. Anno Domini*  
1679. statuted, That none who shall be  
Member of the House of Commons, shall  
vote in the House of Commons, or sit there  
during any Debate in the said House  
Commons, after their Speaker is chosen, until  
such Member shall, from Time to Time  
and in Manner following, first take the  
several Oaths of Allegiance and Supremacy  
and make, subscribe, and audibly repeat the  
Declaration, (in this Act contained, commonly  
called, *The Test*, which see *Page 107*)  
which said Oaths and Declaration, shall  
be in this and every succeeding Parliament,  
solemnly and publickly made and subscribed,  
betwixt the Hours of nine in the Morning  
and four in the Afternoon, by every such  
Member of the House of Commons, at the  
Table, in the Middle of the said House;  
and whilst a full House of Commons is  
there duly sitting, with their Speaker in  
his Chair; and that the same be done in  
the House, in such like Order or Method  
as the House is called over by.

If any Member of the House of Commons  
presumes to do any Thing contrary to  
this Act, every Member so offending, shall  
from thenceforth be deemed and adjudged  
Popish Recusant, convict to all Intents and



purposes whatsoever, and shall forfeit and  
 suffer as a Popish Recusant convict, and shall  
 be disabled to hold or execute any Office or  
 Office of Profit or Trust, Civil or Military, in  
 any of his Majesty's Realms of *Great-Britain*  
*Ireland*, or in any of his Majesty's Realms,  
 Towns, or Foreign Plantations, to the said  
 Realms belonging; and shall be disabled  
 from thenceforth, to sit or vote in any Par-  
 liament, or to sue or use any Action, Bill,  
 Plea, or Information in Course of Law, or  
 to prosecute any Suit in any Court of Equity,  
 to be Guardian of any Child, or Executor  
 or Administrator of any Person, or capable of  
 any Legacy, or Deed of Gift; and shall forfeit  
 for every wilful Offence against this Act, the  
 sum of 500 *Lib.* to be recovered or received  
 of him or them that will sue for the same, and  
 shall be prosecuted by any Action of Debt, Suit,  
 Plea, or Complaint, or Information, in any of his  
 Majesty's Courts of *Westminster*, where no  
 Joinder, Protection or Wager of Law shall

It shall be lawful to and for the House of  
 Commons, as often as they shall see Occasi-  
 on, to order, or cause, all or any of the Mem-  
 bers of Parliament, openly in their House,  
 to take the said Oaths, and to make and sub-  
 scribe the said Declaration, at such Times  
 and in such Manner as they shall appoint:  
 And



And if any Member or Members of the House of Commons shall, contrary to such Order made by their House, wilfully presume to sit therein, without taking the said Oaths, and making and subscribing the said Declaration, every such Member or Members of the House of Commons so presuming to sit, shall be adjudged, and is thereby declared to be, incapable and disabled in Law to all Intents and Purposes whatsoever, to sit in the said House of Commons, or give any Voice therein during that Parliament.

And in every Case, where any Member or Members of the House of Commons, shall by virtue of this Act, be disabled to sit or vote in the House of Commons; then, and in every such Case, without any further Conviction or other Proceedings against such Member or Members, the Place or Places for which they or either of them were elected, is thereby declared void, and a new Writ or Writs shall issue out of the High Court of Chancery, by Warrants from the Speaker of the House of Commons for the Time being, and by Order of the said House, for the Election of a new Member or Members to serve in the House of Commons, in the place or places of such Member or Members so disabled, to all Intents and purposes, as if such Member or Members were naturally dead, &c.

• During



During the taking and subscribing the Oaths and Declaration, all other Proceedings in Parliament are to cease, and the Oath, Declaration and Subscription, with a Schedule of the Names of the persons taking and subscribing them, are ordered to be entred and filed in Parliament Rolls provided by the Clerk of the House, and each Member to pay only 12 Pence for each such Entry.

By *Stat. 1. W. and M. Ch. 1.* it is Enacted, that the Act made in the 30th Year of King Charles II. and all other Acts of Parliament, to so much of the said Act or Acts only as concerns the taking the Oaths of Supremacy and Allegiance, or either of them in the said Acts respectively mentioned, by any Member of either House of Parliament; with relation to their sitting and voting there, are thereby repealed to all Intents and purposes, any thing in the said received Act or Acts to the contrary notwithstanding. And in all future Parliaments, the Oaths of Allegiance and Supremacy, with the Declaration made in the 30th Year of K. Charles II. (set down *Pag. 6. and 17.*) are ordered to be taken, made, subscribed and repeated, by every Member of either House, within the Time, and in the same Manner and Form, and under the Penalties and Disabilities, as the said Oaths of Allegiance and Supremacy, and the said Declaration, by the said Act of the 30th Year of King



King Charles II. are limited, ordained and appointed, to be taken, made, subscribed and repeated, and not at any other Time, or any other Manner, to enable them to sit and vote in Parliament any Thing in the said Acts, or in any of them to the contrary notwithstanding.

By Stat. 13. and 14. W. III. 6. it is Enacted, That no Peer shall vote, make his Proclamation or sit in the House during any Debate, until such Peer take the Oath of Abjuration, and subscribe the same betwixt the Hours of Nine and Four in the Afternoon : Which Oath is to be taken by every Peer, at the Table, when a full House is there, and the Speaker in his place.

As also, it is Enacted, That none who shall be a Member of the House of Commons, shall vote or sit there, during any Debate in the said House, after their Speech is chosen, until such Member shall, from Time to Time, take the said Oath, and subscribe the same in Manner following; that is to say, The said Oath shall be in every Parliament solemnly and publicly made and subscribed, between the Hours of Nine in the Morning, and Four in the Afternoon, by every such Member of the House of Commons, at the Table in the Middle of the said House, and whilst a full House of Commons



ons is there duly sitting, with their Speaker  
his Chair.

If any Peer vote or make his Proxy, and if  
any Member of the House of Commons shall  
assume to vote, not having taken the said  
oath, and subscribed the same as aforesaid,  
every such Peer and Member so offending,  
shall from thence be deemed and adjudged a  
Popish Recusant, convict to all Intents and  
purposes whatsoever; and shall forfeit and  
suffer as a Popish Recusant convict, and shall  
be disabled to hold or execute any Office or  
Place of Profit or Trust, Civil or Military,  
in any of his Majesty's Realms of *Great-Bri-*  
*tain* or *Ireland*, or in any of his Majesty's  
lands, or foreign Plantations belonging to  
the said Realms; and shall be disabled from  
thenceforth to make Proxy, sit or vote in ei-  
ther House of Parliament, or to sue or use  
any Action, Bill, Plaint or Information, in  
any Court of Law, or to prosecute any Suit in  
any Court of Equity, or to be Guardian to  
any Child, or Executor or Administrator of  
any person, or capable of any Legacy or Deed  
or Gift: And shall forfeit for every wilful  
offence against this Act, the Sum of 500 *Lib.*  
to be recovered and received by him or them,  
and shall sue for the same; and to be prose-  
cuted by any Action of Debt, Suit, Bill,  
Plaint or Information, in any of his Majesty's  
Courts



Courts of *Westminster*, wherein no *Esson*  
Protection, or Wager of Law shall ly.



## T I T L E VII.

### *Of Absence from Parliament.*

**E**VERY Member of Parliament is obliged to give Suit and Presence at the Parliament, and to attend daily all the Days thereof, from the first Day of its down-going, to the last Day, and till it rise, except they be excused.

By *Act* 52. *Parl.* 3. *James* I. 1425. it is Statuted, That all Prelates, Earls, Barons, and Freeholders of the King, within the Realm, since they are holden to give Presence to the King's Parliament and General Council, should from thenceforth be holden to compear in proper person, and not by a Proctor, except the Proctor alledge and prove a lawful Cause of Absence (a).

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(a) It seems, that before this Time, personal attendance at Parliaments was not required; no more than now it is at the King's Head-Courts in the Shire, and that in both a Letter of Attourney was admitted, not only to excuse Absence, but the Attourney might do, at the General-Council, every Thing competent to the Constituent; and that by this Act, the Proctor's Power was restricted.



The Unlaw, or Pain of unexcused Absence from Parliament, before and in the Reign of King James I. was 10 *L. Scots*, (a very great sum at that Time); and this is gathered from the Titles of his Sixth, Seventh and Eighth Parliaments, *Annis 1426, 1427, 1428*, follow—

*Comparentibus omnibus illis qui debuerunt & voluerunt commodè interesse, sententibus quibusdam aliis, quorum quidam alii legitime excusati fuerunt, alii vero quasi per contumaciam se absentaverunt, quorum quisque iudicabitur in amerciamiento decem libra-*

By *Act 34. Parl. 11. James VI. Anno 1587*. In case any Earl, Lord, or Baron of Parliament (*b*), Prelate or Burgh, being lawfully summoned, absent themselves from Parliament, without lawful and sufficient Excuse, admitted and allow'd by the Lords of the Articles, pecuniary Pain shall be modified, and ordained to be taken of the Absents, in Manner following: From every Earl 300 *Lib.* from every Lord 200 *Lib.* from every Prelate 100 *Lib.* from every Burgh 100 *Merks*.

Such as did not accompany the King's Majesty on Horseback decently, with Foot-gentles, from his Highness's Palace. to the

H

Parlia-

) At this Time, there were no Dukes, Mar-  
esses or Viscounts in Scotland.



Parliament-House, are by that Act ordained to be reputed for Absents, and to pay accordingly.

For levying this Fine, Letters to poind and distress the Lands and Goods of the Absents are ordained to be directed, or to pay the Fine within 10 Days, under the pain of Rebellion; and if they fail, of putting them to the Horn.

These Penalties were, by the Treasurer collected for the Sovereign's Use.

By *Act 7. Parl. 22. James VI. Anno 1617* this forecited Act is ratified, with this Addition, That the Unlaw of Commissioners or Barons, for Absence from Parliaments, is appointed to be 100 *Lib.* (for that was omitted out of the preceeding Law) And it is further declared, That no Excuse for Absence from Parliament should be received or admitted, except the Licence was granted by the King, under his Note or Subscription, if he was in *Scotland* at the Time, and in his Absence, by the High Commissioner of Parliament; and in case of the said Commissioner's Absence, by the Lord Chancellor and Lord of Secret-Council, to be produced judicially the First Day of the Fencing of each Parliament, to the Clerk-Register or his Deputies.

By the same Act it is declared, That it should be lawful to any Duke, Marquess, Earl

Viscount



Viscount, Lord or Prelate within *Scotland* being absent from Parliament, and lawfully excused, to send a sufficient Power, subscribed with their Hands, to any one of that Estate, having place and Vote in Parliament, who shall be admitted to Reason and Vote for the person absent, during the whole Diets of Parliament.

The ancient Privilege of naming Proxies, which the whole Barons had, before the Year 1425, by the above-cited Act, confirmed to the Nobility and Prelates, till the Union of the Two Kingdoms in the Year 1707, was gone into Disuse.

By an unprinted *Act*, *Parl. 1. Sess. 2.* *Charles II.* entitled, *Act concerning Members of Parliament who do not attend*, it is declared, That each Nobleman absent from the Parliament, shall be liable to the penalty of 200 lib. *Scots*; each Commissioner for a Shire, to the Sum of 600 lib. *Scots*; and each Commissioner for a Burrow, to the Sum of 100 lib. *Scots*; and that without prejudice of what further Censure the Parliament shall think fit.

And by another unprinted Act in the same Session of Parliament, made for settling the Orders in the Parliament-House, it is appointed, That all Members of Parliament do precisely keep the Diets of Parliament, under the pains following, *viz.* Each Nobleman for



each Diet's Absence without Leave, 12 li Scots ; each Baron 6 lib. and each Burges lib. and that they pay the just Half of the penalties for each Diet they come in *sero*, after the calling of the Rolls of Parliament.

By *Act* 1. *Parl.* 1. *Sess.* 3. *William* and *Mary*, dated *September* 10th 1690, these two *Acts* are ratified, and ordained to be put in Execution. And it is thereby further declared, That Members of Parliament being within the Kingdom, and not having a reasonable Excuse, who shall be absent upon the First Day of the Parliament, shall be reputed Absents from Parliaments, and liable to the penalties imposed on such : The Receiver General of the Crown-Rents and Casualties is appointed to receive the respective Penalties of the Absents from Parliaments, according to a List to be signed, and given by the Clerks.

The Clerks of the Session, as Deputies of the Clerk of Register in Parliament, are ordained to make *Sederunts* of each Diet of Parliament, and to mark these who are absent, that they, or any whom they appoint, may exempt from Absents from particular *Sederunts*, the Penalties, conform to this and the foresaid. And they are allowed to apply the same to their own Use, as a Reward given to them for making the daily *Sederunts*.



This was the Law of *Scotland* before the Union; but the Law of *South-Britain*, which will be the Rule in this Case of Absence from either Houses of Parliament, is as follows :

Every Lord Spiritual or Temporal, and every Knight, Citizen or Burgess, shall, upon summons, come to the Parliament, except he can reasonably and honestly excuse himself; else he shall be amerced, &c. that is, respectively a Lord by the Lords, and one of the commons by the Commons.

By Statute 5. *Rich. II. Ch. 4.* in the Year 1382, the King doth will and command; and is assented in the Parliament, by the Prelates, Lords and Commons, That all and singular Persons and Commonalties, which from thenceforth shall have the Summons of Parliament, shall come to the Parliaments in the manner they are bound to do, and have been accustomed within the Realm of *England*, of old times.

And if any Person of the same Realm, which from thenceforth shall have the said Summons, the Knight of the Shire, Citizen of City, Burgess of Burgh, or other singular Person or Commonality) do absent himself, and come not at the said Summons, (except he may reasonably and honestly excuse him to the Lord King) he shall be amerced, and otherwise punished, according as in old Times hath been used within the said Realm, in the said Case.



By Statute 6. Hen. VIII. Ch. 16. in the Year 1514, it is enacted, That from henceforth no Knights (of Shires) Citizens, Burgesſes and Barons of Cinque-ports, nor any one of them that ſhall be elected to come to any Parliament, do depart from the Parliament, nor abſent himſelf till the Parliament be fully finiſhed, ended or prorogued, except he or they ſo departing, have Licence from the Speaker and Commons in the ſaid Parliament aſſembled, and the ſame Licence be entred of Record in the Books of the Clerk to the Parliament, appointed for the Commons Houſe, under the pain of loſing their Wages.



## TITLE VIII.

*Of the Fees of Members of Parliament, and how they are aſſeſſed and levied.*

**I**T being juſt that thoſe who ſhall be choſe Commissioners to Parliament, and who ſhall accordingly attend his Maſteſty, and the Kingdom's Service in Parliament, have Allowance of their Expence \*; therefore by Act 10. Parl. 7. James I. Anno 1427, it is ſtatuted That the Commissioners for Shires ſhall have their Coſts and Expences paid to them by the Freeholders of the Shires whom they repreſent

\* Act 35. Parl. Anno 1681.



and who formerly owed Compearance in Parliament, and that out of their Rents proportionably.

And by *Act 114. Parl. 11. James VI. 1587*: it is decerned, That all Freeholders be taxed for the Expence of the Commissioners of the Shires passing to Parliament; and that the Lords of Council and Session shall yearly direct Letters at the Instance of the Commissioners, for conveening the Freeholders to make the Taxation of the Expence of the Commissioners; and that for Payment thereof, when taxed, Letters of Horning and Poinding be directed upon a Charge of Six Days Warning.

But this Taxation was uncertain and undetermined, till by *Act 35. Parl. 1. Session 1. Charles II. Anno 1661.* the States of Parliament modified and appointed 5 lib. Scots of daily Allowance to every Commissioner, from any Shire, including the first and last Days of the Parliament, together with Eight Days for their coming, and as many for their Return, to the furthest of *Caithness* and *Sutherland*, and proportionally at nearer Distance: And that the whole Freeholders, Heritors and Liferenters, holding of the King and Prince, shall, accordingly to the Proportion of their Lands and Tenements lying within the Shire, be liable and obliged in payment of the said Allowance, excepting Noblemen and their Vassals; for payment whereof, all Execution by Horning,



Pointing and Quartering, as is used for payment of Excise, is appointed to pass; and the daily Allowance is to be accordingly, as the Time and Days of the Parliament shall be asserted under the Hand of the Clerk Registers. But this daily Allowance is only given for the Days that the Commissioners attended, and kept the Diets of Parliament; for by *Act* *Parl.* 1. *Seff.* 3. *William and Mary*, 1690, the Clerks of the Session, as Deputies to the Clerk of Register in Parliament, are ordained to make *Sederunts* of each Diet of Parliament, and to mark those who are absent; and the Clerk of Register is ordained to give to the Commissioners for Shires and Burghs (who require) Certificates of their Attendance in Parliament, for exacting from the Shires and Burghs which they represent, their Fees, conform to the said *Sederunt*.

And by *Act* 21. *Parl.* 3. *Charles II.* in 1680 it is statuted, That the whole Heritors, Life-renters and Wadsetters, within each Shire or Stewartry, shall contribute for the Charges of the Commissioners thereof, according to their Valuation, except those who hold of Noble men, or are Proprietors of Lands belonging to Burghs-Royal in Burgage.

In *South-Britain*, the Wages and Expence of the Members of Parliament in the House of Commons, are assessed and levied by the Law following. By *Statute* 12. *Rich. II.* 12. in the

Year



Year 1389, the levying of the Expence of knights coming to Parliament, is appointed to be made as in time then past; and if any Lord or other have purchased Lands or other Possessions, that were wont to be contributory to such Expences, they shall still continue to be so, notwithstanding such Purchase.

The Fee of a Knight of any County hath, of late out of Mind, been 4 sh. *per diem*, as is particularly exprest in many Records; and the Fee of every Citizen and Burgefs is 12 sh. *per diem*.

And by *Statute 23. Henry VI. 2.* in the Year 1445, the Sheriff in the next County-Court, after he shall receive the Writ for assessing the Wages of the Knights of Parliament, is appointed to make Proclamation, That the Coroners, Chief Constables, Bailiffs, and all others (that will) appear at the next County-Court, to assess the same Wages, at which the Sheriff and other Officers shall be present in proper Person, in pain that every one that makes Default shall forfeit 40 sh. and then the Sheriff shall, in full County, assess every Hundred by itself, and every Town in each Hundred by itself, so as the Sum assessed upon all the Hundreds, exceeds not the intire Charge of the County, nor that assessed upon all the Towns in each Hundred, exceed not the Sum charged upon the Hundred in which they

The



The Sheriff is ordained to levy the said Assessments as speedily as may be, after they are so assessed, and to deliver them to the Knights and that the same shall not be levied, but in Places where the same hath been formerly levied, and thereafter in every Writ for levying such Wages, the *Statute 23. Henry VI. 10.* to be insert.

If the Sheriff or other Officer levies more than is assessed, he forfeits 20 lib. to the Queen and 10 lib. to the Prosecutor; for Recovery of which 10 lib. the Prosecutor is to have a *Scire facias* (g): And if the Defendant is afterwards convict, the Prosecutor shall recover the 10 lib. to his own Use (over and above the said 20 lib.) and besides Treble Damages for Costs of Suit.

Justices of both Benches, Justices of Assize, Goal Delivery and Peace, have Power to hear and determine those Abuses, as well as the Suit of the King, as for the Party.

The *Stat. 35. Henry VIII. 2. Anno Dom. 1544* mentions, That whereas, Burghs and Burghesses in Parliament of *England* and *Wales* have used to have allowed them, viz. the Knights

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(g) *Scire facias.*] is a Writ judicial, most commonly to call a Man to shew Cause to the Court, when it issues, why Execution of a Judgment passed, should not be made out, &c.



rights 4 sh. and the Burgesſes 2 sh. a Day or  
 re, during the Parliaments, and their rea-  
 able Time of coming to and returning from  
 Parliament, together with their Coſts of  
 its and other ordinary Fees and Charges;  
 erefore it is ordained, That the Sheriffs of  
 the twelve Shires in *Wales* and the County  
*Monmouth*, ſhall have power to levy the  
 Fees of the Inhabitants of theſe Shires  
 Counties, and ſhall pay them to the  
 rights in two Months, after the ſaids Knights  
 ſhall have delivered unto them their Writs  
*ſolutione feodi Militis Parliamenti*, in pains to  
 ſeit 20 lib. to be recovered by Bill, Plaint, &c.  
 d to be divided betwixt the King and the  
 oſecutors; and for every Month that ſuch  
 default is made after the ſaids two Months,  
 lib. more to be levied, as aforeſaid. The  
 ead Officers alſo of the Cities and Bur-  
 oughs in the ſaids twelve Shires and County,  
 ſhall levy and pay their Burgeſſes Wages and  
 es within the like Time, after the Writs  
*ſolutione feodi Burgens Parliamenti* are deli-  
 red unto them, upon the like pains to be  
 ried of the Goods and Cattels of ſuch Head  
 officers.

The Juſtices of Peace in each Shire and  
 ounty, have power to Tax every City and  
 ough, in the ſeveral Counties where they  
 habit, reſpectively, towards the Wages of  
 e Burgeſſes within the Shire and Towns;  
 which



which Taxes shall be again rated upon the Inhabitants of each such City and Burgh, four or six discreet and substantial Burgeſſes there; and then levied and paid by the He Officers unto the Burgeſſes of Parliament in the ſaid Shire Towns, in Manner and Form aforeſaid, and upon like pains.

My Lord chief Juſtice *Coke*, in the 4th Part of his *Inſtitutes* of the Laws of *England*, concerning the Jurisdiction of Courts, ſays, That in the firſt Year of the Reign of *Richard I. Anno 1377.* the Commons petitioned in Parliament, That all Perſons having *Lay Fe* might contribute to the Charge of the Knights and to all Tailages; and that the King answered, The Lords of the Realm will not loſe their old Liberties. Alſo he obſerves there is a Writ in the Register, *De expenſa militis non levandis ab hominibus de antiquo Dominio, nec ab natiuis.* And that there are other Diſcharges.

By *Stat. 6. Henry VIII.* in the Year 1514 it is enacted, If any Knight, Citizen or Burgeſſes depart from the Parliament, without the Licence of the Speaker and Commons in Parliament aſſembled, to be entred upon Record in the Book of the Clerk to the Parliament he ſhall loſe his Wages.

Any Lord of Parliament by Licence of the Sovereign upon juſt Cauſe to be abſent, may make a Proxy to a Lord of Parliament; but a Knight



night, Citizen or Burgeſs of the Houſe of Commons cannot make Proxy, becauſe he is ſelected and truſted by Multitudes of People.

Heard Thus much, concerning the Fees and Wages of Members according to the Laws in Force in *South and North-Britain*, may ſuffice, and that more eſpecially at this Time, when the Commiſſioners for Shires at their Election, come in Uſe to renounce all Claims to Fees from the Freeholders; and when the Opportunity of doing Service to our Country is courted by our Patriots, and when thoſe who are ſelected by the Barons and others, look on that Honour as a ſufficient Reward in it ſelf.

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## T I T L E IX.

*the Privilege belonging to Members of Parliament.*

**B**EFORE the *Stat. 12. W. III. 3. A. D. 1701.* The Privilege of Members was indeterminate, lying much in the Custom and Will of either Houſe of Parliament, and only known by them.

The ſaid Act is Entitled, *An Act for preventing any Inconveniencies, that may happen by*  
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*Privilege of Parliament* ; and contains five Paragraphs. The Sense of the First is,

I. That any Person may prosecute any Peer of this Realm, or Lord of Parliament, or any of the Knights, Citizens and Burgesses of the House of Commons ; for the Time being, or their, or any of their menial or other Servants, or any other Person intitled to the Privilege of Parliament, in any of the Courts of Record at *Westminster*, or High Court of *Chancery*, or Court of *Exchequer*, the Dutchy Court of *Lancaster*, or in the Court of *Admiralty*, and in all Causes Matrimonial and Testamentary in the Court of the *Archbishop*, the prerogative Courts of *Canterbury* and *York*, and the *Delegates*, and in the Courts of Appeal, at any Time from and immediately after the Dissolution or Prorogation of any Parliament, until a new Parliament shall meet, or the same be again assembled, and from, and immediately after any Adjournment of both Houses of Parliament, for above the Space of fourty Days, until both Houses shall meet or assemble ; and that the said Courts respectively, shall, and may after such Dissolution, Prorogation or Adjournment, proceed to give Judgment, and to make final Orders, Decrees and Sentences, and award Execution thereof, without any Privilege of Parliament to the contrary notwithstanding.



II. The second Paragraph of this Act contains a *Proviso* against the subjecting the Person of any Knight, Citizens and Burgesses of the House of Commons, or any other Person entitled to the Privilege of Parliament, to be arrested during the Time of Privilege; nevertheless allowing Liberty to any Person or Persons, having Cause of Action or Complaint against any Peer of this Realm, or Lord of Parliament, such Person or Persons, after the Dissolution, Prorogation or Adjournment, aforesaid, or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, shall and may have such Process of the Courts of *King's Bench*, *Common Pleas* and *Exchequer*, against such Peer or Lord of Parliament, as he or they might have against him out of the Time of Privilege; and if any Person or Persons, having Cause of Action against any of the said Knights, Citizens or Burgesses, or any other Person intitled to the Privilege of Parliament, after any Dissolution, Prorogation, or such Adjournment, aforesaid, or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, shall and may execute such Knight, Citizen or Burgess, or any Person intitled to the Privilege of Parliament, in the Courts of *King's Bench*, *Common Pleas* or *Exchequer*, by Original Bill, and

Summons



Summons, Attachment, and *Distress Infinite* thereupon, to be issued out of any of the said Courts of Record, which the said respective Courts are impowered to issue against them or any of them, until he or they shall enter common Appearance, or file common Bail in the Plaintiff's Action, according to the Course of each respective Court; and any Person or Persons having Cause of Suit or Complaint may, in the Times aforesaid, exhibite any Bill or Complaint against any Peer of this Realm or Lord of Parliament, or against any of the said Knights, Citizens or Burgeſſes, or other Person intituled to the Privilege of Parliament in the High Court of Chancery, Court of Exchequer, or Dutchy Court of Lancaster, and may proceed thereupon by Letter Subpoena.

(a) *Distress infinite*] Distress ſignifies a Compulſion certain and real Actions, whereby to bring a Man to appear in Court, or to pay a Debt of Duty demyed, the Effect whereof, moſt commonly, is to detain the Party diſtrained, to Replevy the Diſtreſs; and to take his Action of Treſpaſs againſt the Diſtrainer, or elſe to compound neighbourly with him for the Debt or Duty, for which the Diſtreſs was made: it hath many Diviſions one whereof is, unto Finite and Infinite; Diſtreſs Finite, is that which is limited by Law, how often it ſhall be made to bring the Party to Trial of the Action. Diſtreſs Infinite, is without Limitation, until the Party come as againſt a Jury, that refuseth to appear *ſuper Certificatione Aſſiſe*, where the Proceſs is *venire facias habens corpora*, and *Diſtreſs infinite*.

(a) *Subpoena* Degree of the Case hath Equity by w. Bu'd by tters, g m, and a *Subpoena* tneſſes, ere is alurt of 1e Namich cha y and Pl



*Subpoena*, (a.) as is usual, and upon leaving Copy of the Bill with the Defendant, or at his House or Lodging, or last Place of Abode, may proceed thereon; and for Want of an Appearance or Answer, or for Nonperformance of any Order or Decree, or for Breach thereof, may sequester the real and personal Estate of the Party, as is used and practised, where the Defendant is a Peer of this Realm; but shall not arrest or imprison the Body of any of the said Knights, Citizens and Burgeesses, or other privileged Person, during the Continuance of the Privilege of Parliament.

III. That in case where any Plaintiff shall, for any reason or occasion of Privilege of Parliament, be stayed or prevented from prosecuting any Suit by him commenced, such Plaintiff

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(a) *Subpoena*] Is a Writ, whereby all Persons under the Degree of Peerage, are called into *Chancery*, in such Case only, where the Common Law fails, and hath made no Provision, so as the Party, who in Equity hath Wrong, can have no ordinary Remedy by the Rules and Course of the Common Law. But Peers of the Realm in such Cases, are called by the Lord Chancellor's, or Lord Keeper's Letters, giving Notice of the Suit intended against them, and requiring them to appear. There is also a *Subpoena ad testificandum*, for the summoning of Witnesses, as well in *Chancery*, as other Courts. There is also a *Subpoena* in the *Exchequer*, as well in the Court of *Equity* there, as in the Court of Pleas; and these Names proceed from the Words in the Writ, which charge the Party summon'd to appear at the Day and Place assign'd, *Sub poena Centum Librarum*.



tiff shall not be barred by any Statute of Limitation, or non-suited, dismissed, nor his Suit discontinued for want of Prosecution of the Suit by him begun; but shall, from Time to Time, upon the Rising of the Parliament be at Liberty to proceed to Judgment and Execution.

IV. That no Action, Suit, Process, Order, Judgment, Decree, or Proceeding in Law or Equity against the King's original and immediate Debtor, for the Recovery or obtaining of any Debt or Duty originally and immediately due or payable unto his Majesty, his Heirs or Successors, or against any Accomptant, or person answerable to render an Account unto his Majesty, his Heirs or Successors, for any part or Branch of his or their Revenues, or other original and immediate Debt or Duty, or the Execution of any such Process, Order, Judgment, Decree or Proceedings, shall be impeached, stayed or delayed, by or under the Colour or Pretence of any Privilege of Parliament: Yet so nevertheless, that the person or persons of any such Debtor, Accomptant, or person answerable, or liable to Account, being a Peer of the Realm, or Lord of Parliament, shall not be liable to be arrested or imprisoned, by or upon any such Suit, Order, Judgment, Decree, Process or Proceedings, or being a Member of the House of Commons, shall not, during

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the Continuance of the Privilege of Parliament, be arrested or imprisoned, by or upon any such Order, Judgment, Decree, Process or Proceedings.

V. The last Paragraph contains a *Proviso*, That neither this Act, nor any Thing there- contain'd, shall extend to give any Jurisdiction, Power or Authority, to any Court to hold Plea in any real or mixt Action, in any other manner than such Court might have done before the making this Act.

The Lords of Session have (a) found and discerned, That a Member of Parliament is not oblig'd, while the Parliament is sitting, to notice a Process call'd against him, nor at calling the Summons to seek a Sight of it, or to have an Advocate to appear and answer for him.

And in another Case (b), The Lords sifted Process against a Member, tho' he was not attending, in respect the Parliament was sitting and he represented, that he was bound to go and attend, and claim'd his Privilege.

Yea, tho' a Member omit to claim Privilege, and *in initio litis* sist himself, by producing Defences; yet any Time he is allow'd

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(a) In the Case of the Laird and Lady Greenock, June 1709. (b) 15. November 1709. Livingston against the Laird of Grant.



low'd (c) to claim his Privilege, and then upon propound to stop Procefs.

During Privilege, he cannot be charg'd with Horning, nor can Sentence be pronounc'd against him, his Person or Goods.

Generally the Privilege of Parliament doth hold, except in the Cafes of Treason, Felony, and the Peace.

Nevertheless, the Lords (d) did not fustain Privilege to hinder Circumduction of the Term for not reporting a Commission, because the Advocates for the Member had undertaken it; however, they superfeded the tract till a Time out of Privilege.

Any transgressing against the Privilege of Parliament allow'd to Members, is, by either of the Houses, with respect to their several Members, punished according to the Honourableness of the Trespass, at the Will and Arbitriment of the respective House.

(c) Captain *Bruce* against Mr. *William Dalrymple*  
(d) 17. February 1708, *Grant* of That-Ilk against Earl of *Sutherland*.